United States Court of Appeals
for the Second Circuit

APPENDIX

77-1203

B

p/s

In the

United States Court of Appeals

For the Second Circuit

United States of America,

Plaintiff-Appellee,

v.

John M. Ebbecke,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT-APPELLANT'S APPENDIX

Gerald L. Shargel
Fischetti & Shargel
Attorneys for Defendant-Appellant
1290 Avenue of the Americas
New York, New York 10019
(212) 586-3732

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DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. No. 76 CR 999

JOHN M. EBBECKE ,

Defendant.
-------------------------------------X

Proceedings

10-28-76	Filed Indictment and assigned to Ward, J. as related to 74 Cr. 658. . . . Gagliardi, J.
11-04-76	Deft. (Atty. Martin R. Weinberg) pleads NOT GUILTY. Ordered F/P. Bail fixed at $10,000 PRB Deft. ROR to 4:00 P.M. today to post bond. Assigned Ward, J. for all purposes. . .Cooper, J.
11-04-76	Filed appearance bond in the of $10,000 N/Surety.
11-29-76	Filed Deft's. Notice of Appearance by M. R. Weinberg.
1-05-77	Pre-Trial Conference held. Trial set for 1-24-77 at 10:00 A.M. Bail modified $10,000 P.R.B. sec. by $1,000 cash. Bail limits extended to states of N.Y. and N.J. . . .So Ordered, Ward, J.
1-06-77	Filed gov't. affidavit for w/h/c/ Ad Test. for Frank W. Le Vien. Writ ret. 1-18-77.
1-07-77	Filed Appearance Bond in the sum of $10,000 sec. by $1,000.
1-21-77	Filed Order that Warden of MCC release Frank W. Le Vien under writ of h/c ad. test. signed by this court. Le Vien is to be released to the custody of W.S. Holbrook, F.B.I. on 1-23-77 at 1:00 P.M. and returned 1-23-77 at 6:00 P.M.. So ordered, Bryan, J.
1-24-77	Filed government's requests to charge.
1-26-77	Filed defendant's requests to charge.

1-25-77	Filed Order that Frank N. Lettieri give testimony at te trial of the within matter. So ordered, Mac Mahon, J.
1-24-77	Trial begins.
1-25-77	" "
1-26-77	Trial concluded.
1-27-77	Jury deliberating. Verdict GUILTY on all counts. P.S.I. ordered. Sentence date 3-3-77 at 9:30 A.M. Bail cont'd. pending sentence. So ordered, Ward, J.
2-03-77	Filed Copy of an Order directing Frank W. Le Vien be released to the custody of the F.B.I. for Ad. Test. Writ satisfied 1-21-77.
2-03-77	Filed Writ of H/C ad. test. of Frank W. Le Vien. MCC acknowledge 1-27-77.
3-11-77	Filed Judgment and Probation/Commitment Order - The deft. is hereby committed to the custody of the Attorney General for imprisonment for a period of one (1) year and One (1) day on each of counts 1 & 2. Count 2 to run concurrently with sentence imposed on Count 1. Imposition of prison sentence is suspended on each of counts 3 and 4 and deft. is placed on probation for a period of two (2) years on each count to run concurrently with each other and consecutively with term of imprisonment imposed on Count 1 and subject to the standing probation order of this court. Deft. continued on present bail until he posts bail pending appeal fixed in the amount of $10,000 P.R.B., secured by $1,000 cash on condition appeal is promptly prosecuted. Bail limits extended to the States of N.Y. and N.J., cont'd. So Ordered, Ward, J. All copies issued.
3-14-77	Filed Notice of Appeal to the U.S.C.A. from judgment of March 11, 1977 by the deft. Mailed notices to U.S. Atty. and counsel for appellant.
4-04-77	Filed Notice of Original record being Certified and transmitted to the U.S.C.A.
4-04-77	Filed Affidavit of John Ebbecke, in support of motion to proceed on appeal in Forma Pauperis.

4-06-77	connection with the deft's. motion to proceed on appeal in Forma Pauperis.
4-07-77	Filed Memo - endorsed on deft's. motion to proceed on appeal in Forma Pauperis is granted. So ordered, Ward, J.
4-12-77	Filed transcript of record of proceedings dated January 24 and 27, 1977.
4 25-77	Filed first supplemental record being certified and transmitted to U.S.C.A.
4-27-77	Filed transcript dated 3/11/77 (sentence).
4-27-77	Filed Notice of the Supplemental Record being Certified and transmitted to the U.S.C.A.
8-10-77	Filed True Copy of the U.S.C.A. Mandate dismissing appeal to the U.S.C.A.
8-11-77	Bench Warrant issued.
10-06-77	Deft. w/a/p present for application for bail pending appeal. Bail previously set for $10,000 P.R. B. secured by $1,000 cash reinstated. (States N.Y. and N.J. limits). Mr. Zucherman to appear in court on 10-13-77 at 9:30 A.M. Ward, J.
10-25-77	Filed affidavit of Gerald D. Zuckerman pursuant to a direction of the Hon. Robert J. Ward, U.S.D.C. Judge made in the course of a hearing on October 13, 1977.
11-02-77	Filed Papers received from the Magistrate's office: Docket sheet, warrant for arrest of Deft's. and copy of the U.S.C.A. order.

knowingly did aid, abet, induce and procure the commission of the offenses herein set forth:

COUNT	DATE	AMOUNT
2	September 13, 1974	$ 75,000
3	October 31, 1974	1,500
4	December 5, 1974	255,000

(Title 18, United States Code, Sections 656 and 2).

/s/ ROBERT B. FISKE, JR.
ROBERT B. FISKE, JR.
United States Attorney

FOREMAN

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------X
UNITED STATES OF AMERICA,

v.

No. 76 CR 999

JOHN M. EBBECKE,

Defendant.
-----------------------------------X

The Grand Jury charges:

INTRODUCTION

1. At all time relevant to this indictment, the Manufacturers Hanover Trust Company (hereinafter "the Bank") was a bank organized under the laws of New York State, was a member of the Federal Reserve System and its deposits were insured by the Federal Deposit Insurance Corporation.

2. At all times relevant to thi Indictment, Frank W. Le Vien was an officer, agent and employee of the Bank, to wit, an Assistant Vice-President and commercial loan officer at the Bank's branch located at 42nd Street and Madison Avenue, New York, New York.

THE CONSPIRACY

3. From on or about the 1st day of June 1974, up to and including the date of the filing of this Indictment, JOHN M. EBBECKE, the defendant, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together with Frank W. Le Vien and others both known and unknown to the Grand Jury, to commit offenses against the United States in violation of Title 18, United States Code, Section 656.

THE OBJECT OF THE CONSPIRACY

4. It was part of said conspiracy that the defendant JOHN M. EBBECKE would and did aid and abet Frank W. Le Vien to embezzle, abstract and misapply the moneys (sic), funds and credits of the Bank and the moneys (sic), funds, assets and securities entrusted to the custody of Frank W. Le Vien in an amount in excess of $700,000.

THE MEANS OF THE CONSPIRACY

The following means, among others, were used by the defendant JOHN M. EBBECKE and his co-conspirators to effect the ends and purposes of the conspiracy:

5. From on or about June, 1, 1974 up to an including approximately December 31, 1974, Frank W. Le Vien would and did make unauthorized debits from and credits to accounts under his control, including but not limited to the following: Alpha Scaffolding and Equipment Corporation, Andy's Marine Service, Inc., Cellini Furniture Corporation, FNL Corporation, Ficarra Furniture Company, Inc. and Karl Koch, III.

6. During said period of time, the defendant JOHN M. EBBECKE, in his capacity as a financial consultant and adviser introduced the above described accounts to the Bank and advised Frank W. Le Vien that he, Le Vien, could make unauthorized debits from and credits to said accounts for Le Vien's own purposes.

7. During said period of time, the defendant JOHN M. EBBECKE caused Frank W. Le Vien to make unauthorized transfers of funds from accounts under his control directly and indirectly to the defendant and to Gramercy Capital, Ltd., a corporation controlled by

the defendant.

OVERT ACTS

8. The following overt acts, among others, were committed in the Southern District of New York and elsewhere, in furtherance of said conspiracy:

(a) On or about August 22, 1974, the defendant JOHN M. EBBECKE had a telephone conversation with Frank W. Le Vien concerning Andy's Marine Service Co., Inc.

(b) On or about August 27, 1974, Frank W. Le Vien wrote an order to debit the account of Andy's Marine Service Co., Inc. in the amount of $20,000 and to credit the account of Cellini Furniture Co., Inc. in the same amount.

(c) On or before September 13, 1974, the defendant JOHN M. EBBECKE met with Frank W. Le Vien, Frank Lettieri and William J. Kitson and had a conversation.

(d) On or about September 13, 1974, Frank W. Le Vien wrote an order to debit the account of Chempar Chemical Company, Inc. in the amount of $75,000 and issued a bank check in the amount of $75,000 to Gramercy Capital, Ltd.

(e) On or about September 13, 1974, the defendant JOHN M. EBBECKE authorized his secretary to issue a Gramercy Capital, Ltd. check in the amount of $68,000 to Ficarra Furniture of Queens.

(f) On or about October 31, 1974, Frank W. Le Vien wrote an order to debit the account of Chempar Chemical Co., Inc. in the amount of $1,500 and issued a bank check to Gramercy Capital, Ltd. in the amount of $1,500 for the personal use of defendant JOHN M.

EBBECKE.

(g) On or about December 4, 1974, Frank W. Le Vien had a conversation with the defendant JOHN M. EBBECKE.

(h) On or about December 5, 1974, Frank W. Le Vien deposited a check in the amount of $255,000 received from Karl Koch, III, into the account of Alpha Scaffolding and Equipment Company, Inc.

(i) On or about December 9, 1974, the defendant JOHN M. EBBECKE received the proceeds of a check in the amount of $2,000 which had been debited to the account of Alpha Scaffolding and Equipment Corp.

(j) On or about December 10, 1974, the defendant JOHN M. EBBECKE caused a check drawn on the account of Alpha Scaffolding and Equipment Corp., in the amount of $15,000, to be deposited in the account of Gramercy Capital, Ltd.

(Title 18, United States Code, Section 371).

COUNTS TWO THROUGH FOUR

On or about dates set forth below, in the Southern District of New York, Frank W. Le Vien, being then an employee, agent and officer of the Manufacturers Hanover Trust Company, New York, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, unlawfully, wilfully and knowingly did embezzle, abstract and misapply moneys (sic), funds and assets intrusted to the custody and care of said bank and to the care and custody of Frank W. Le Vien in the below listed amounts.

2. The defendant JOHN M. EBBECKE unlawfully, wilfully and

AFTERNOON SESSION

1:15 p.m.

(In open court, jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

You may proceed, Mr. Reilly.

MR. REILLY: Thank you, your Honor.

The Government calls Frank W. LeVien.

FRANK WILLIAM LeVIEN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. LeVien, were you formerly employed by the Manufactuers Hanover Trust Company?

A Yes.

Q And in what capacity?

A Commercial lending officer, assistant vice president.

Q And during what period of time were you employed in that capacity by the bank?

A From January 1967 to December 1974.

Q Mr. LeVien, try to raise your voice, because this

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is a large courtroom, so everybody in the jury can hear you.

Did you resign from the bank?

A Yes.

Q When did you do that?

A December 27, 1974.

Q Did the Government file an information against you on July 15, 1976?

A Yes.

Q And did that charge bank embezzlement?

A Yes.

Q Did you plead guilty to that charge?

A Yes.

Q To how many counts of bank embezzlement and misapplication did you plead?

A Two counts.

Q Were you sentenced by Judge Ward of this court?

A Yes.

Q And did that take place on September 21, 1976?

A Yes.

Q To what term were you sentenced?

A One year and one day.

Q And on the other count?

A Two years' probation, suspended sentence, two years' probation.

Q And is that probation to commence upon your release from prison?

A Yes.

Q Are you presently incarcerated?

A Yes.

Q Do you know John M. Ebbecke?

A Yes.

Q How long have you known John Ebbecke?

A Approximately three-and-a-half years.

Q When did you first meet John Ebbecke and under what circumstances?

A I met John Ebbecke, I believe, in 1973, in the summer or fall of that year.

I met him through his insurance agent, Gerson Fabe. I had gone out there with another officer of the Manufacturers Hanover to discuss the possibility of a loan for John Ebbecke's company.

Q What type of company was that?

A It was a marina, a boat marina.

Q Did there come a time when John Ebbecke entered a different type of business?

A Yes.

Q When was that and what was that type of business?

A Well, John--John became a--what you would call a money broker or consultant, and that would have been early in 1974, to the best of my recollection.

Q And in his capacity as a money broker, did he have deals with you as an officer of the bank?

A Yes.

Q And would you characterize those as relatively few dealings or frequent dealings?

MR. WEINBERG: I am going to object to the form of the question.

MR. REILLY: I will withdraw the question.

Q How often did you have dealings with John Ebbecke?

A I had dealings with John Ebbecke on several occasions involving several accounts at the bank.

Q How often during the period 1974 would you either speak with John Ebbecke or meet with him?

A Numerous times. I couldn't--

Q During the course of a single week?

A At least once a day I would talk to him on the phone and perhaps see him twice or three times a week.

Q Where did you usually see him, if there was any usual place?

A A restaurant, Gatsby's.

Q Where is Gatsby's located?

THE COURT: Was located.

Q When you were going to Gatsby's, to the best of your knowledge, where was Gatsby's located?

A Gatsby's was located on 41st Street between Fifth Avenue and Madison Avenue, right around the corner from the branch I was located at.

Q Was John Ebbecke a friend of yours during this period?

A Yes.

Q Do you know an individual by the name of Dash Kalal?

A Yes.

Q K-a-l-a-l?

A Yes.

Q Did you arrange for any loans to be made by Manufactuers to Dash Kalal?

A Yes.

Q Did there come a time when Mr. Dash Kalal came up with an overdraft?

A Yes.

Q In what amount?

A $70,000.

Q Did you ever introduce Dash Kalal to John Ebbecke?

THE COURT: Could you spell that name, please?

MR. REILLY: D-a-s-h, the first name, Kalal, K-a-l-a-l.

THE COURT: Thank you.

I interrupted a question. Would you rephrase it, please?

Q Did you introduce Dash Kalal to John Ebbecke?

A Yes.

Q About when was that?

A That would be approximately in early 1974 or perhaps late 1973.

Q And what was your purpose of introducing Kalal to Mr. Ebbecke?

A I introduced Dash Kalal to John Ebbecke, not when the overdraft in his account had occurred, but for two reasons:

One was in the company Dash Kalal Associates, Inc., they needed more money and Manufactuers Hanover had loaned them as much money as they could, so Dash was in need of other bank funds and I introduced him to John, who had some access to some funding from banks out on Long Island, so that was the first purpose I introduced him.

The second purpose was that Mr. Kalal was working on an international arrangement with the little kingdom of Nepal,

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where he was acting on behalf of the government and some of the consultants to the government in the construction of a new hotel in the capitol of Nepal.

Q Did John Ebbecke tell you whether he was able to get financing for Dash Kalal?

A After Dash Kalal had met John, John had taken Dash Kalal to the Vanguard Bank in Hempstead and Dash was given a loan at that bank--his company, Dash Kalal Associates, Inc. was given a loan at that bank.

Q Did Ebbecke tell you whether Dash Kalal received a loan at any other bank?

A Subsequent to that loan, Dash was still in need of money, primarily for the overdraft which had occurred at the branch at 42nd and Madison at Manufacturers Hanover, he also needed money for Nepal, so he had told--Dash Kalal had told me--

Q Do not tell us what Dash Kalal told you.

Just tell me whether Mr. Ebbecke ever advised you that he had been successful in obtaining any other loans for Dash Kalal.

A Yes, a loan from the--I believe it was the Pan American Bank in New Jersey.

Q What did he say, John Ebbecke?

A I received a telephone call from John saying that a loan presentation had been made to the Pan American Bank and that the company had been granted a $60,000 loan which was to be funded immediately and that checks would be given to Dash Kalal.

Q Did you see Dash Kalal thereafter?

A Yes.

Q And what did he do?

A He came into the bank with the checks that he had been given, a starter set check when you open up an account, and he wrote out a check for $60,000 payable to his company, Dash Kalal Associates, Inc. and deposited it in his account at the Manufacturers Hanover Trust Company.

Q Did that clear up the overdraft situation?

A At the time he deposited it he did, but the check was returned for insufficient funds, which, of course, then created the overdraft back again.

Q Did you have a conversation with John Ebbecke as a result of that, when it came back "Insufficient funds"?

A Yes.

Q And what did he tell you?

A Well, because the check had come back, I was concerned and I spoke to John and I asked him what had happened over at the bank because I had not at that time telephoned or talked to the bank, and he said--John Ebbecke said there was some sort of communication problem between himself and Dash Kalal, that the loan was okay, but that Dash should not have deposited the check but that he would talk to Dash and take care of it.

In the meantime, I had redeposited the check a second time for clearance.

Q And did that check come back fully satisfied?

A No. The check came back, again, "Insufficient funds."

Q As a result, what, if anything, did you do?

A I called the bank, the Pan American Bank in Jersey.

Q Did you attempt to resolve the $60,000 overdraft situation with Dash Kalal?

A Yes.

Dash was at this time anxious to go to Nepal to finish this project. Our bank was also anxious about it, because we were going to play a part in it.

Q Was John Ebbecke playing any part in that transaction?

A For the Nepal situation?

Q Yes.

A Yes.

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He was--John was helping Dash to raise some equity money for the project and this was being done by a company down in Florida who had referred--who then referred Dash Kalal to private investors in London and Dash had gone to London after the overdraft was taken care of.

Q Just tell us, did you attempt to obtain other financing for Mr. Kalal?

A Yes.

When the check bounced for the second time, Dash could not leave until the overdraft was taken care of.

He came to me and said can I help him, because he would not leave me with a $70,000 overdraft because I had paid against that check.

Q What, if anything, did you do?

A I introduced Dash Kalal to two of my personal friends, one of which who had an account at the bank, another one who did not, who provided the private money to Dash Kala, which he then--in the form of a loan, which he then deposited in the bank and covered the overdraft.

Q Was one of those friends named Judd **Feinerman?**

A Yes.

Q Was Judd Finerman known to John Ebbecke?

A Yes.

Q And what arrangement, if any, did you have or

Dash Kalal have with Judd Feinerman?

A When I introduced Judd Feinerman to Dash Kalal, Dash told him about the Nepal project.

MR. WEINBERG: I am going to object to what Dash Kalal said, any testimony as to what occurred between third parties.

THE COURT: Yes, yes.

Q Did Judd Feinerman--

THE COURT: We will strike that portion of the answer which related to what Dash Kalal might have said in the absence of Mr. Ebbecke.

The jury will disregard that.

You may proceed, sir.

Q Did Judd Feinerman agree to make a loan to Dash Kalal?

A Yes.

MR. WEINBERG: Objection to that question What Mr. Feinerman agreed or did not agree is a state of mind.

THE COURT: Strike it.

The jury will disregard what Mr. Feinerman agreed to do.

Would you rephrase your question, please?

Q Did Mr. Feinerman make a loan to Dash Kalal?

A Yes.

Q In what amount?

A $50,000.

Q Did you sign a promissory note in connection with that loan?

A Yes.

Q I am going to show you Government's Exhibit No. 4 for identification (handed).

Just inspect it.

Is that a copy of the loan agreement that you signed with Judd Feinerman?

A Yes.

Q And what did it obligate you to do?

A It obligated me, as a guarantor, that if Dash Kalal did not repay the loan, I was to be looked upon to repay the loan.

Q In the amount of $50,000?

A Correct.

Q As an assistant vice president at the Manufacturers Hanover Trust Company, how much were you earning during 1974?

A $25,000 per year.

Q And at that time, what did you have in the way of savings account?

A We had two savings accounts which would aggregate around three or four thousand dollars.

Q And was Mr. Dash Kalal the primary obligor on this note to Judd Feinerman?

A Yes.

Q Showing you Government's Exhibit No. 3, is that a copy of the check that Mr. Feinerman issued to Dash Kalal?

A Yes.

Q Did you have occasion to tell John Ebbecke about the fact that you had signed as a guarantor and that Dash Kalal had obligated himself to Judd Feinerman for $50,000?

A Yes.

Q Were you also able to obtain any other financing for Mr. Kalal?

A Yes. Since the overdraft was $70,000, another $20,000 was required, and I introduced Dash Kalal to Henry Levy, who at that time was the owner of Gatsby's Restaurant and who provided the additional $20,000 of his personal money to Dash.

Q Did you sign any note as a guarantor?

A No.

Q Did you make any agreement yourself with Henry

Levy?

A Yes.

Q What was the agreement?

A It was a verbal agreement that if the loan wasn't paid, he expected me to repay it.

Q And did you advise John Ebbecke at any time subsequent to that that you had undertaken this agreement?

A Yes.

Q Did Dash Kalal then leave for Nepal?

A Yes.

Q And about what time was the loan made, to your recollection, of $50,000 and $20,000, just going back?

A Approximately--late in March of 1974; March 23, 24.

Q And when did you tell John Ebbecke about these two transactions where you took upon yourself the obligation as guarantor?

A It would have been shortly thereafter.

Q What happened to Dash Kalal?

A On April 22, I believe, of 1974, Dash Kalal was killed on a Pan American plane crash in Bali, Indonesia.

Q Subsequent to that, did Judd Finerman ask you to pay the $50,000 note?

A Yes.

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Q And did you pay it?

A Yes.

Q And did you pay the $20,000 that was loaned from Henry Levy?

A Yes.

Q Did you attempt to seek assistance from Dash Kalal's widow?

A Yes.

Q To your knowledge, was she the beneficiary of a life insurance policy?

A Yes. She was the beneficiary of a large policy.

Q Were you successful in obtaining the assistance of Dash Kalal's widow?

A No. When I went up to see her, I presented her with the note of $50,000 that was signed by Dash Kalal and myself and she took it and gave it to her attorney, but never, never paid the obligation, nor did the estate pay it.

Q How did you arrange to pay $70,000? When did you arrange to do it? Tell us all the facts.

A Well, I was then put in a precarious position of having to repay this money and also being under pressure from the lenders of the money.

The first one who approached me was Judd Feinerman who wanted the money and said he was not going to wait for the

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estate to be settled since I was the guarantor.

I had discussed this with John Ebbecke, and it was decided--I decided the only way I could do this was to take funds from one account in the bank and pay it off and try to manipulate the best way I could so that I could honor this obligation that I had made in the form of a guarantee.

Q And how did you go about doing this? Which funds did you use?

A For the $50,000 payable to Judd Finerman, I took that from an account at the bank called Chempar Chemical Company, Inc.

Q Was that an account which you had under your control?

A Yes.

Q And was that a large or a small business account?

A It was a medium-sized business account.

Q Did you advise anybody at Chempar Chemical Company that you were doing this?

A No.

Q And about what time, what month did this take place?

A Well, the loan was due 35 days--I would say it took place in May or June. That's 1974.

Q Did you arrange to pay Henry Levy in the same manner?

A Yes.

Q Did you discuss this situation after you had made these debits and paid Judd Finerman and Henry Levy, did you discuss that with John Ebbecke?

A Yes. I told John what I had done.

Q Tell us what the discussion was about.

A Well, I told John that I was responsible for this money which I then paid out, and I told him that I would have to repay the money to Judd Finerman and to Henry Levy and that I had to make some arrangements to do this because the pressure was being put on me to repay this amount of money.

So John then said he understood and he'd see what he could do to help me.

MR. REILLY: I offer in evidence Government's Exhibits 3 and 4.

THE COURT: Show it to your adversary.

MR. WEINBERG: If your Honor please, the only objection I am going to make is under the best evidence rule.

These are photocopies of the originals, the originals which should be available to the Government.

THE COURT: Let us find out where the originals are.

Of course, you know Rule 1003 on the admissibility of duplicates, that is, that a duplicate is admissible to the same extent as an original, unless there is a genuine question raised as to the authenticity of the original or in the circumstances it would be unfair to admit the duplicate in lieu of the original.

I would **inquire** whether there is any genuine question or circumstances which would cause me to pause because of the requiements of Rule 1003.

MR. WEINBERG: No, there is no question as far as the genuineness of the copies.

THE COURT: Very well.

I would think under the circumstances counsel has made a point that these are duplicates, but there does not seem to be any question raised as to the authenticity of the original or that it would be unfair in the circumstances to admit the duplicates in lieu of the originals. Therefore, the documents will be received.

If at any point either counsel wishes to substitute the original or originals for the copies, they may do so with leave of the court.

xxx (Government's Exhibits 3 and 4 for

identification, respectively, were received in evidence.)

Q Did John Ebbecke propose to assist you in the problem that you now found yourself in?

A Yes.

Q What did he propose to do or what was said?

A Well, corporations that were looking to borrow money could be introduced to the bank and I could evaluate them as to their possibility of obtaining bank funds, that the people that he would be sending to me undoubtedly would be the presidents of the corporations and would be in a position to try to help me in my problem.

Q And to your knowledge, did John Ebbecke received any commissions for bringing these accounts in as a loan finder?

A To my knowledge, I don't know what John's arrangements were with his people, who he brought in, because I never had any direct financial commissions back and forth between John and I.

Q Did he bring in an individual by the name of Frank Lettieri?

A Yes.

Q When was that, about?

A That would have been in approximately July of 1974.

Q Prior to him bringing in Frank Lettieri, did you have any discussions with John Ebbecke about Frank Lettieri on the telephone or in person?

A Yes.

Frank Lettieri was president of Cellini Furniture Corporation located in Brooklyn. They were manufacturers of furniture. John had told me he had spoken with Frank Lettieri and thathe told Frank Lettieri that I had had a problem and that Frank Lettieri, when he came into the bank, would be willing to help.

Q Did Mr. Lettieri come into the bank?

A Yes.

Q Did you issue a loan to Mr. Lettieri?

A I issued a loan to his corporation, yes.

Q Did you issue a loan to the Cellini Corporation?

A Yes.

Q Did he have an additional corporation called FNL Corp.?

A Yes.

Q Do you recall how much money you issued to FNL Corp.?

A A loan was made to FNL Corp. of $60,000.

Q With respect to the Cellini Corporation, did you make--how many loans did you make?

A There were three loans made to Cellini aggregating $110,000.

Q Were they made at the same time?

A Within close proximity, but not at the same time, to the best of my knowledge.

Q I am going to show you what has been marked as Government's Exhibit 5 for identification (handing).

Do you recognize that exhibit?

A Yes.

Q What is that exhibit?

A It is a photo--they are photocopies of notes which are prepared by the Manufacturers Hanover Trust Company evidencing liability.

Q And is this a photocopy of the notes that you made to the Cellini Corporation?

A Yes.

Q And what were the dates upon which they were made?

A The first one would be July 8th, 1974.

Q And the amount?

A $30,000.

The second one is July 26, 1974 for $25,000.

And the third was August 19, 1974 for $52,000.

Q Upon authorizing those loans by the Manufacturers

Hanover Trust Company, were checking accounts opened by Cellini and FNL Corp.?

A Yes. That is a requirement.

Q And were the proceeds of these loans transferred to the checking accounts?

A Yes.

Q Did you have occasion yourself to then make a debit from the Cellini checking account?

A Yes.

Q For your own purposes?

A Yes.

Q And what purpose did you have and how was the debit made?

A The debit was made by transferring $52,000 from Cellini Furniture Corporation to Chempar Chemical Corp.

Q And what was the purpose of that?

A Well, I had used the Chempar account to repay the $50,000 that was owed to Judd Finerman as part of the Dash Kalal funds that were loaned to him.

Q Did you advise John Ebbecke at any time about this transfer from Cellini to Chempar?

A Yes.

Q And, in effect, you were covering the liability that now existed in the Chempar account, is that correct?

A Correct.

Q And creating a new debit in the Cellini account?

A Correct.

Q Did you use any of the funds for your own personal purposes?

A No.

Q Did there come a time when you made a down payment on a home?

A Yes.

Q And was that sometime in July?

A Yes.

Q In what amount?

A $12,500.

Q And where did you obtain that $12,500 from?

A From the Cellini Manufacturing Company account.

Q And did you subsequently purchase a home, make a complete purchase, or did you--

A Yes.

Q --have a closing with respect to that home?

A Yes. I had a closing in August of 1974.

Q Where is the home located?

A Plandome, Long Island.

Q And what was the total purchase price of the home?

A $125,000.

Q Where did you obtain the money for that?

A The funds came from two or three related accounts at the bank, the funds of which were channeled into Cellini's account and--Cellini Furniture Corporation's account and that account was used to purchase the house.

Q Did you advise John Ebbecke that you were using funds from Cellini to pay for the purchase of your house?

A Yes.

Q What, if anything, did he say?

A He didn't say anything. Basically, I just told him what I was doing and he offered to help.

Q Did you ask--

THE COURT: What, if anything, did he say?

THE WITNESS: He just said to me he offered to help, and since I said to him that the Cellini account would be used, that he would offer to help by talking to Frank Lettieri, the president of the company.

Q Did John Ebbecke tell you in July whether or not he was indebted to one Judd Finerman?

A Yes.

Q In what amount?

A $10,000.

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Q And did there come a time when you had a conversation with Mr. Ebbecke in July of 1974 concerning the payment of that debt to Judd Finerman?

A Yes.

Q Tell us what was said and what was done in connection with that.

A The loan was granted by Judd Finerman to John Ebbecke for $10,000.

When the loan was granted, Judd Finerman telephoned me and told me he would like the loan--

MR. WEINBERG: Objection, your Honor, as to what Judd Finerman said.

THE COURT: Yes. Sustained.

We will take out everything after Finerman telephoned him.

Q Did John Ebbecke ever tell you that he had obtained a loan from Judd Finerman?

A Yes, yes.

Q Did he tell you what the purpose of the loan was for?

A I believe it was a combination of legal fees, personal obligations that he needed funds.

Q Did there come a time when John Ebbecke spoke to you about the payment of that loan?

A Yes.

Q And when was that and what happened?

A I can't quite recall the exact day or time that this was, but the loan was a short-term--to the best of my knowledge, 30-day loan, so it would have been right around the maturity date or a little after the maturity date of the loan.

I told John in a telephone conversation that Judd Finerman was asking for the money and he was calling me for the money, and John said that he would see what he could do and he would call me back, which he did.

Then when he phoned me back, he told me to take the $10,000 from the Cellini account, that he had spoke to Frank Lettieri.

And I took the $10,000 from the Cellini account and issued a check to Judd Finerman for $10,000.

Q I am going to show you Government's Exhibits 11 and 11-A for identification, and ask you whether you can identify those exhibits (handed).

A Yes.

Q Tell us what they are; first 11.

A This is an official check of the Manufacturers Hanover Trust Company for $10,000, dated July 26, 1974, payable to Judd Finerman.

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Q Who issued that check?

A I did.

Q And 11-A?

A This is a debit ticket showing the $10,000 coming from the account of Cellini Furniture, Incorporated at the 42nd and Madison Avenue branch, and it is an official check--this official check was issued as against this debit.

Q Did John Ebbecke ever return $10,000 to the Cellini account, to your knowledge?

A No.

Q Did you have any discussions with him about this $10,000 payment after it was received?

A Just one--probably one conversation where I said that I had given Judd Finerman the $10,000 check and the loan was paid.

Q And what did he say?

A "Fine."

MR. REILLY: I am going to offer Exhibits 11 and 11-A in evidence.

MR. WEINBERG: I have no objection.

xxx THE COURT: Received.

(Government's Exhibits 11 and 11-A for identification, respectively, were received in evidence.)

MR. REILLY: I will also offer in evidence Government's Exhibit 5 for identification.

THE COURT: That is the photocopies of the three notes?

MR. REILLY: That is correct, your Honor.

THE COURT: Very well.

MR. WEINBERG: No objection to that.

THE COURT: Received.

xxx

(Government's Exhibit 5 for identification was received in evidence.)

Q Did there come a time when the Cellini account was overdrawn?

A Yes.

Q Was that sometime in August?

A Yes.

Q And as a result--what, if anything, did you do in order to remedy that?

A Well, to answer that question, when Frank Lettieri came into the bank and I had asked Frank Lettieri, I said, "Was it mentioned to you by John that I had a problem?"

He says to me, "Yes."

MR. WEINBERG: Your Honor, objection to what Mr. Lettieri may have said.

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THE COURT: Yes.

Q I will rephrase the question.

THE COURT: Strike that conversation, "Was it mentioned," and the "Yes." The jury will disregard that.

Q Did there come a time when a gentleman by the name of Andrew Nesbit came to the bank?

A Yes.

Q And did you have any conversations with John Ebbecke about Andrew Nesbit prior to that?

A Yes.

Q Tell us about what time that was that you had these conversations and what Mr. Ebbecke told you.

A Well, the time period here would have been around July or August of 1974, and John telephoned me and said that he had a good friend of his, Andrew Nesbit, who was president of Andy's Marine, Incorporated, a corporation located in Freeport, Long Island in the boat business and marina, repairs and service of boats, sales of boats, and a financial statement had been prepared and that he would send Andy into the bank with the statement to see if we could extend any funds to the corporation.

While I was doing that, he had been in the process of helping Andy to get additional funding on a long-term basis in the form of an SBA loan.

Q What, if anything, did you say to John Ebbecke?

A I said to him that I had the problem at the bank to cover up these accounts as they were created, and he said when Andy came in, if you could make a loan, to take whatever you needed to cover up whatever I had to cover up and that he would speak to Andy, because I got the impression he was very close with Andy.

Q Did Andrew Nesbit come into the bank?

A Yes.

Q And did you issue a loan to him?

A I issued a loan to the corporation, Andy's Marine, Incorporated.

Q In what amount?

A $25,000.

Q Didyou have any discussions with Andy about your use of the funds?

A Yes.

Q What was that discussion?

A Well, the discussion went like this:

I didn't know Andy. He came into the bank and signed the--gave me his financial statements.

I asked Andy if he had talked to John Ebbecke regarding a particular problem, and by his answer apparently he had not, so I just opened up the account, made the loan of $25,000 predicated on the financial statements which were provided to me and then I phoned John after I had made the loan and put the funds into the corporate account.

Q What did you tell John Ebbecke when you phoned him?

A I [illegible] John that Andy was in, I had spoke to him, and I asked--I told him that I got the impression that Andy hadn't spoken to John as of yet.

So John told me that he would speak to him, not to worry about it, and to take what I needed.

Q What did you do with the funds in Andy's Marine?

A $20,000 of the $25,000 loan was taken out of the account and was put into the Cellini account, I believe.

Q Did Mr. Ebbecke introduce you to an individual by the name of Frank Leone at the bank?

A Yes.

Q And was that sometime in late August as well?

A Yes.

Q Tell us what happened.

A Frank Leone is the president of Ficarra Furniture Company.

I had known Frank for several years back when I bought furniture from him and he was--

Q How many years before way that?

A I bought my furniture from him in 1966.

Q And so you had not seen him since 1966, when you went in to purchase some furniture?

A I seen him since 1966. I was just recommended to him.

Q Go ahead.

A Frank Leone came into New York, to the best of my knowledge, with John, because I met them at Gatsby's Restaurant around the corner.

I was detained for a while at the bank and they had been waiting for me, and I went in and sat down and met Frank Leone and reintroduced myself to him.

It was a very brief conversation. Frank Leone invited me out to take a look at his stores and he told me he would provide me with financial statements to evaluate the possibility of a line of credit for his company.

Q Did you make a loan to Ficarra Furniture Company?

A Yes. Once I received the statements from the corporation, the financial statements were good, I evaluated them along with another officer and we granted a $90,000 loan to that company.

Q Did you advise Frank Lettieri that you had a problem and that you might be using his account?

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A Frank Lettieri?

Q Frank Leone.

THE COURT: Ficarra.

MR. REILLY: Or Ficarra. My mistake.

Q Frank Leone or Ficarra.

A Excuse me?

Q Did you advise Frank Leone of Ficarra Furniture that you had a problem and you were going to use his account to take care of it?

A No.

Q Did you have any conversations with John Ebbecke about your using the Ficarra account?

A Yes.

Q Tell us what you said and what he said.

A Well, things were getting rather hectic at that point. I had to get--we had to make up funds not only for the purchase of the house but funds that Cellini Furniture needed and a few of the other accounts involved, and John told me that while he wasn't perhaps as close to Frank Leone as he was to Frank Lettieri, that he would talk to Frank Leone and that there would be no problem as long as whatever I took was replaced.

Q Did you take anything from Ficarra?

A Yes.

Q And how much did you take from Ficarra at that point?

A There was--of the $90,000, which represented the original loan, approximately $60,000 was taken to put into other accounts.

Q And do you recall when you took those funds from Ficarra?

A The exact dates would escape me now, but it would probably be sometime in September.

Q Did you make any deposits to Cellini from those funds?

A Yes. The funds were going into Cellini and whatever accounts needed the funds.

I can recall definitely putting funds in Cellini from Ficarra.

Q Do you remember if you made any deposits to Andy's Marine Company?

A I believe so, yes.

Q Do you know whether you made any deposits to Alpha Scaffolding?

A Yes.

Q Was Alpha Scaffolding another account that was opened at or about that time?

A Yes.

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Q Who was the principal of Alpha Scaffolding?

A Jack Kitson.

Q Did John Ebbecke represent Mr. Kitson in connection with opening that account?

A Yes. I introduced Jack Kitson to John and John subsequently brought Jack Kitson into the bank for a loan for his company, Alpha Scaffolding Company.

Q Did you have any discussions with John Ebbecke about using that account as well as the others?

A Yes.

Q Tell us what was said.

A Well, at that time, when Alpha opened up the account, I had to cover some funds in the Cellini account for the purpose of the house and a problem arose because the deposits made in the Cellini account did not clear, were returned for insufficient funds and account closed, so by the Alpha account coming in and granting a loan to the Alpha account of $70,000, I was able to take $65,000 and wire it to Florida, to a bank in Florida, so that that bank could honor $65,000 worth of checks that were written by Cellini.

Q Where did you get that $65,000 from?

A From the Alpha account, Alpha Scaffolding.

Q Did you tell Mr. Jack Kitson that you were doing that?

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A No.

Q Did you advise John Ebbecke that you were doing that?

A Yes.

THE COURT: Just one moment.

(Pause.)

Ray DeSimone picks up here to end of day

Q To your knowledge, did any checks come in on the Alpha Scaffolding account after you had debited $65,000 from the total of $70,000?

A Yes. Jack Kitson did not know or was not aware of the amount of money I was transferring out of his account. When the loan had been granted, he had written some checks which was in excess of the $5,000 left in the account. So an overdraft occurred.

Q Did you do anything to remedy that overdraft?

A Well, in a short period of time funds would have been taken from another account to cover that account.

Q Did those funds come from Ficarra Furniture?

A Yes, I believe they did.

Q Now, did there come a time when you heard or received any complaints from Ficarra Furniture?

A Yes, I received a telephone call, first from the bookkeeper and then from Frank Leone himself as to why the bookkeeper had received overdraft notices, because when the account is overdrawn at the bank, the bank automatically sends out overdraft notices. I told the bookkeeper I would check into it and I called John up and asked John to find out what we could do. I said, "This fellow, the bookkeeper, didn't know what to do and he was screaming as to what was going on." So realizing I didn't want that situation, it was a matter of moving funds out of another account into Ficarra's account.

Q Did you have a meeting to resolve this problem?

A Yes. A meeting was called. I asked John and by mutual agreement we decided we had better talk it over. Frank Lettieri attended the meeting at Ficarra Furniture.

Q Who else was present?

A Jack Kitson was there, myself, Frank Leone.

Q And was John Ebbecke there?

A Yes.

Q What time of day was this?

A I rather recall it to be late in the afternoon, possibly 5:00 or 6:00 o'clock.

Q To the best of your recollection, what date did this take place on?

A I can't recall the exact date that it took place. September or October of 1974.

Q I am going to show you Government's Exhibit 30 for identification and ask you whether this refreshes your recollection in any way?

A Yes. The meeting would have taken place shortly before September 13th. Probably September 12th or September 11th.

Q What, if anything, did Frank Leone say at this meeting?

A When I entered he had said that he didn't know what was going on or why the overdrafts, but he said to me that he had signed a loan for $90,000 and he expected to have received that $90,000 and that's what he would repay, the $90,000. And that any other problems, straighten out.

Q Was John Ebbecke present when he said that?

A Yes.

Q Now, did you have a conversation thereupon with John Ebbecke?

A Yes.

Q Now, tell us what John Ebbecke said and what you said, to the best of your recollection.

A The conversation was predominantly between John and I. To the best of my recollection, Jack Kitson didn't say anything. To the best of my recollection, Frank Lettieri only briefly stated he needed an additional $25,000. So the rest of the conversation was between

46a

John and myself. And we briefly went over the problem of funds that I needed to straighten out the various accounts. I asked John if he could help and he said at that time there wasn't much he could do. So after thinking myself, and since things were becoming rather on the desperate side, I said to John that I would have to do something at the bank to get the funds and I didn't mention where I was getting the funds from. But my only concern was once I had gotten the funds I would have to transfer the funds from that account to another account and I didn't want to use any other account at the bank. So he suggested that he could use the Gramercy, G-r-a-m-e-r-c-y, Capital Corporation, which was a company that he was--that John Ebbecke was the president or one of the principals of, and that the funds could go to Gramercy and in turn Gramercy would offer to repay the funds back to the companies that should have gotten the funds in the first place.

That was just about the construction of the meeting.

Q Did you agree to do that?

A Yes.

Q And subsequent to the meeting what action did you take?

A I went back to the bank--

Q Was that the following day or sometime thereafter?

A It would have been either the following day or perhaps a day after that. Within close proximity to that date. And I debited the account of Chempar, C-h-e-m-p-a-r Chemical Company for $75,000 and issued--

Q Did you advise Chempar Chemical Company that you were doing that?

A No. The funds were taken out of the account by a fraudulent loan that was put on the books by myself. So Chempar's account was credited for the proceeds of the loan. It was then debited because the funds were taken out in the form of an official check payable to Gramercy Capital, and in turn the check was delivered over to Gramercy.

Q I show you Government's Exhibit 40 for identification and ask you to identify that.

A This is a debit ticket prepared by the Manufacturers Hanover Trust dated September 13th, debiting the account of Chempar Chemical Corp. for $75,000, with the reason being "An official check issued today," which would have been September 13, 1974, "to Gramercy Capital Corporation."

Q And didyou cause that to be prepared?

A Yes.

Q Now, I show you Government's Exhibit No.--I showed you 40-A. I am now showing you Exhibit 40 for identification. Identify that, please.

A This is the official check dated the same day, 9/13/74, for $75,000, payable to Gramercy Capital Corporation and signed by me as an authorized signatory.

Q What did you do with that check?

A It was delivered to Gramercy Capital Corporation.

Q Do you know how it was delivered to Gramercy Capital?

A To the best of my recollection, John Duncan--

Q Who?

A John Duncan, D-u-n-c-a-n, who was under the employ, to the best of my knowledge, of Gramercy Capital--

Q What did he do for Gramercy Capital or John Ebbecke?

A To the best of my knowledge, he drove the automobile.

Q He was a chauffeur?

A Chauffeur.

Q To the best of your recollection this check was picked up by Duncan and you gave it to him?

A Yes.

Q I show you Government's Exhibit 42 for identification. Can you identify what that is?

A This is a deposit ticket--

Q Manufacturers Hanover Trust Company?

A A Manufacturers Hanover Trust Company deposit ticket for $75,000 which was deposited on September 13, 1974, at the Mineola Office of the Manufacturers Hanover Bank.

Q And to your knowledge, did Gramercy Capital have an account at Mineola branch of the Manufacturers Hanover Trust Company?

A Yes.

Q How can you tell that that's deposited to the Mineola branch?

A Every branch in the system is assigned a number.

Q Do you know the number for Mineola?

A Yes.

Q What is it?

A 171.

Q And what is the number for your branch at 42nd Street, or what used to be your branch?

A 128.

THE COURT: What is the exhibit number?

MR. REILLY: The exhibit number is 42, your Honor.

THE COURT: Thank you.

Q Is that your handwriting on Exhibit 42, the deposit slip?

A No.

Q And this endorsement on the check, "Gramercy Capital Company, is that your handwriting?

A No.

Q I offer in evidence Government's Exhibit 40, 40-A and 42.

MR. WEINBERG: No objection.

THE COURT: Received.

xxx (Government's Exhibits 40, 40-A and 42 for identification were received in evidence.)

Q I am going to show you 34 for **identification** and I will ask you whether you can identify that? I call attention to what appears to be a photocopy of the third check on the paper.

A Yes. This is a check, a photocopy of a check from Gramercy Capital, Ltd. as the maker of the check to payee, Ficarra, F-i-c-a-r-r-a, Furniture of Queens, in the amount of $68,000.

Q Have you seen that check before, the original of it?

A Yes.

Q When did you see that?

A To the best of my knowledge, when I delivered the check to John Duncan for $75,000, I simultaneously received from him this check for $68,000 which I deposited at the Manufacturers Hanover branch at 42nd and Madison for the account of Ficarra Furniture.

Q I show you Government's Exhibit 44 for Identification. Can you identify that?

A Yes. This is the deposit made on the same date, September 13, 1974, for $68,000. I made out the deposit slip.

Q Is that at your branch?

A That is at Branch 128.

Q And it bears your signature or your initials?

A It bears my initials "For immediate credit."

Q What effect did that have?

A Well, by "Immediate credit," the bank officer is in effect treating this deposit as if you would deposit cash instead of a check, which would normally take anywhere from three business days on up, depending on where the check is going to be paid.

Q And with respect to the $75,000 deposit at the Mineola branch, was there an authorization there for a zero delay credit?

A Yes. This is an initial by the delay box where there is a zero, by the officer of that branch, who had telephoned me regarding this deposit.

Q Did he request advice for you as to whether he could authorize zero delay on that?

A Yes.

Q And did you authorize it?

A Yes.

Q Is any of the writing on the check which we described before in the amount of $68,000 on Exhibit 43 for identification your handwriting?

THE COURT: 43 or 34? I may be in error.

MR. REILLY: 43, your Honor.

THE COURT: That is Gramercy to Ficarra check of $68,000?

MR. REILLY: That is correct, your Honor.

THE COURT: All right.

A The front of the check does not bear my handwriting. The check is the writing of somebody else. The back of the check--to the best of my knowledge, and I can't be sure of this, but I would say that I wrote the endorsement on the back, "For deposit only for Ficarra Furniture Corp.," and deposited. I can't recognize the writing so clearly, but I think it would be mine because the check came to me, as best I can recall, without an endorsement on the back. Since I deposited the check into the Ficarra account, it would have been my endorsement on the back.

Q Who presented this check to you when you first saw it, the original thereof?

A John Duncan.

MR. REILLY: Your Honor, with respect to Government's Exhibit 43, we expect that we will have or we hope we will have, through the issuance of a subpoena, already issued, the original cancelled check. At the moment we do not. We, therefore, offer this as the best evidence.

MR. WEINBERG: I would have no objection to receiving this in evidence.

THE COURT: Very well. 43 is received, without objection.

xxx (Government's Exhibit 43 for identification was received in evidence.)

MR. REILLY: We will also offer in evidence Government's Exhibit 44, the deposit slip for $68,000.

MR. WEINBERG: No objection.

xxx (Government's Exhibit 44 for identification was received in evidence.)

Q Did you have occasion to make additional loans on behalf of Chempar Chemical Company but without their knowledge?

A Yes.

Q Did you make a loan for $150,000 to Chempar on October 15, 1974?

A Yes.

Q What did you do with the proceeds of that loan?

A The $150,000 loan for Chempar, the proceeds of that were, first of all, used to--$110,000 of it was used to repay the outstanding loan for Cellini Furniture Corporation.

Q One loan or more than one loan?

A Well, the three loans aggregated $107,000 plus there was at that time a $3,000 overdraft. So the total amount was $110,000 which had to be taken off the books because of the pressure I was under from the officer in charge of the branch to get the loan paid.

Q And with respect to Andy's Marine, did you do anything with respect to that loan of $25,000?

A Yes. As part of that $150,000 Andy's Marine, even though it was a small loan of $25,000, it had run into the overdraft position, and Andy had to write some checks and there were no funds in the account and my boss was getting a little upset with this loan.

So then I took the $25,000 and put it into Andy's Marine account and reduced the loan, by agreement with

Andy, instead of $25,000, $22,000, leaving a balance of $3,000, for which he needed the funds to write checks.

Q When you made these transfers of funds that you have just described, did you speak with John Ebbecke about it?

A I spoke to John regarding Andy's account.

Q What did you say to him when you spoke to him?

A After I spoke to Andy, I told John--I think I told him at that time that I paid the loan off, not that there was a $3,000 balance. I also informed him that the Cellini loan had been taken off the books as well as the accountant who was informed.

Q Directing your attention to October 31, 1974, did you have occasion to issue a check to John Ebbecke?

A Excuse me, on what date?

Q Did you have occasion on October 31, 1974, did you have occasion to issue a check to Gramercy Capital?

A There was a check issued to Gramercy Capital I know of $1,500 dollars, if that's the one you are referring ot.

Q Tell us about that.

A Well, again, that makes part of the $150,000 fraudulent loan to Chempar Chemical. I had still owed Ficarra $11,000 at that time and I wasn't too much concerned about Ficarra because there were balances in the account. But I took $8,500 dollars and put it into Ficarra's account. John had told me he needed some funds. So I agreed to, for personal expenses, and I agreed to give him the funds in the form of an official check payable to the company for $1,500.

Q Did he ask you for a loan and did he sign a note?

A No.

Q Did Gramercy Capital come in and sign a note for $1,500?

A No.

Q Was there any evidence of indebtedness between Gramercy Capital and the Manufacturers Hanover Trust Company?

A No.

Q Did you tell Mr. Ebbecke where you were getting this check for $1,500 from?

A No.

THE COURT: The check was made payable to whom?

THE WITNESS: Gramercy Capital.

Q Showing you Government's Exhibit 52 for identification.

A This is an official check of the Manufacturers

Hanover dated October 31, 1974, paid to the order of Gramercy Capital Corporation, $1,500, signed by myself.

Q Were you, prior to issuing this check for $1,500, personally indebted to John Ebbecke in any amount of money?

A No.

Q Were you personally indebted to the Gramercy Capital Company in any amount of money?

A No.

Q Did John Ebbecke ever offer to repay $1,500 in connection with this check?

A No.

Q Did he ever have any discussion with you after receiving the proceeds of this $1,500?

A To the best of my recollection, no.

Q Is this your signature on the back of the check? Is that your endorsement?

A Yes. I endorsed the back of the check "Gramercy Capital Corporation," and told John that I would make the deposit at the branch, which I did, and deposit right into the Gramercy Capital account. I had gotten the account number from the Mineola branch and just made out the deposit slip.

Q Showing you 53 for identification. Is this the deposit slip?

A Yes. This is the deposit slip dated October 31, 1974, for $1,500, made out by myself, and deposited into the Gramercy account.

Q Did John Ebbecke tell you anything when he asked you for these proceeds? What did he say?

A The best of my recollection, it was for personal expenses and rent.

Q Did he say anything with respect to the state of his checking account?

A That he needed the funds into the account to cover some checks he had written that were very important to him that they be paid.

Q Did you authorize a zero delay on this deposit?

A Yes.

MR. REILLY: I offer in evidence Government's Exhibit 52 and 53 for identification.

MR. WEINBERG: No objection.

THE COURT: Received.

xxx (Government's Exhibits 52 and 53 for identification were received in evidence.)

Q Did there come a time when you met an individual by the name of Karl Koch?

A Yes.

Q And prior to meeting Karl Koch, did you have any discussion with John Ebbecke about this Mr. Karl Koch?

A Yes. John, to the best of my knowledge, telephoned me. To the best of my knowledge, it was a telephone conversation that he had met a fellow by the name of Karl Koch who had just sold a business, of which he was the owner, and had received a partial payment of some $255,000 and that Mr. Koch was looking to purchase a certificate of deposit from a large commercial bank and that he had been shopping around trying to get the best rate he could.

Q What time did you meet Mr. Koch, what time of the year?

A It would have been early in December. December 1st, 2nd.

Q Where did you meet Mr. Koch?

A I met Mr. Koch at Gatsby's Restaurant.

Q And after meeting Mr. Koch at Gatsby's Restaurant, did you have occasion to see him at the bank?

A Yes. I went to Gatsby's Restaurant and I had already the amount Manufacturers Hanover quoted for the period of time he was interested in. I left and went back to the bank, after a brief conversation, and, to the best of my knowledge, Mr. Koch came back to the bank alone, came to my desk, asked me again what the rate was and told me he would let me know what he was going to do regarding the purchase of the certificate of deposit.

Q Did there come a time when Mr. Koch asked you to purchase a certificate of deposit for him?

A Yes. He came back to the bank maybe the day after or in close proximity to his first day at the bank and asked me again for the rate and I got him that rate that was applicable on that day, and he decided that he would purchase a certificate of deposit for, I believe, 30 days, to mature during the first week of January, 1975, in the amount of $255,000, the proceeds of which were represented by an official check drawn on the Marine Midland Bank, payable, I believe, to Karl Koch.

He gave me the check. I had him fill out an application for a certificate of deposit. I gave him a receipt for the check. He told me to purchase the certificate of deposit for 30 days and left the bank.

Q Did you give him a receipt?

A Yes.

Q And did you make any deposit, did you make any purchase of a certificate of deposit that day?

A No.

Q On the following day, did you have occasion to

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talk to John Ebbecke?

A Yes. I did not know Karl Koch. I didn't know really anything about him. We still had the problem of getting this account cleare up and that account cleared up. So I said--I had a conversation with John on the telephone and I asked John whether these funds could be used to help me with my situation, because I didn't know what the relationship he had with Karl Koch, because I didn't have any at all.

Q Was John Ebbecke the person who introduced you to Karl Koch?

A Yes. And John indicated to me that he told me to use the funds, whatever I needed, to help out my situation and that when the time came for Karl Koch--the certificate of Karl Koch to be renewed, that it would probably be rolled over, that is, re-renewed again. Although at that time I was a little bit dubious because I know Mr. Koch told me he would require a few thousand dollars for tax purposes after the CD matured, and then he would invest the balance of it back into a certificate of deposit. I was left with the impression that for a short period of time I could use the funds to clear up other accounts and then worry about that when it matured next year, the following 30 days.

Q Did John Ebbecke suggest any account into which the moneys should go?

A Actually I believe it was myself, I had a conversation with John, and I asked John what account did he think I should use, and he said he really didn't know. Use whatever one I think is best. And I suggested Alpha Scaffolding, Jack Kitson was the president of the company, and John said, "Okay."

Q I am going to show you Government's Exhibit 56, 57 and 58 for identification and ask you whether you recognize those exhibits?

A Yes. Exhibit No. 56 is a cashier's check of the Marine Midland Bank--

Q Is that a photocopy?

A That's a photocopy.

Q Had you ever seen the original of that before?

A Yes. For $255,000, payable to Karl Koch III, dated December 4, 1974, and signed by a Thomas Taylor, who was an authorized signatory, I presume, of the Marine Midland Bank.

Exhibit 57 is my receipt to Karl Koch for the official check, Exhibit No. 56, $255,000, and Exhibit 58 is the deposit slip I made up on December 5, 1974 for $255,000. I gave the deposit immediate credit. The funds went into the

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account of Alpha Scaffolding Company at Branch 128.

MR. REILLY: I offer these three exhibits in evidence, 56, 57 and 58.

MR. WEINBERG: No objection.

THE COURT: Received.

xxx (Government's Exhibits 56, 57 and 58 for identification were received in evidence.)

Q When did you make the deposit of $255,000 into the Alpha Scaffolding account?

A I would have to see the deposit ticket. Either December 4th or December 5th.

(Pause.)

A December 5th.

Q Shortly after December 5, 1974, did you have occasion to see Jack Kitson come into the bank?

A Yes.

Q And he is the principal or president of Alpha Scaffolding?

A Correct.

Q And what, if anything, happened?

A After I put the funds into Alpha Scaffolding account and told John, Jack Kitson came into New York with John--

Q When you say "John," that's John Ebbecke?

A John Ebbecke. And Jack Kitson came into the bank alone and sat down at my desk and he told me that he was told by John Ebbecke that a large sum of money had gone into the account; that he needed some counterchecks, which are checks that the bank holds if you need a check and you don't have any, you can come into the bank and the bank will fill out the account number and you could use it for whatever purpose you need.

Apparently he didn't have any checks on him. So I took out some starter checks or counterchecks, I'm sorry, and I gave Jack Kitson two or three checks.

In addition to that, he told me that he had to cash a check for $2,000, that John Ebbecke needed some money. I said, "Fine." The check was made out, payable to cash for $2,000. It was endorsed by Jack Kitson. I took it over to the teller and cashed the check.

To the best of my knowledge, I then gave Jack the money.

Q Showing you Government's Exhibit 59 for identification, can you identify that?

A Yes.

Q What is that?

A This is a countercheck made out on December 6th, which would have been the day after the deposit of $255,000,

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payable to the order of cash for $2,000, signed by Jack Kitson, endorsed by Jack Kitson and approved by myself and it was cashed at the branch that day.

THE COURT: $2,000?

THE WITNESS: $2,000 even.

Q What became of that $2,000 after you gave it to Jack Kitson?

A It was given to John Ebbecke.

Q Were you there?

A Yes.

Q Did you observe it?

A Yes.

MR. REILLY: I offer in evidence Government's Exhibit 59, which is a photocopy.

MR. WEINBERG: No objection.

THE COURT: Received.

xxx (Government's Exhibit 59 for identification was received in evidence.)

Q I show you Government's Exhibit 60 for identification. I will ask you, first of all, whether any of the writing which appears on that exhibit is yours?

A No, none of the writing is mine, with the exception of the account number. The policy of Manufacturers Hanover, when you gave out a countercheck to anybody, the

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officer had to write the account number in on this check. If this check didn't have an account number, somebody could find it and put it in any account. He wrote it out on the check and gave the blank check to Mr. Kitson.

Q You did not sign "William J. Kitson"?

A No.

Q Did you sign "Gramercy Capital, Ltd., $15,000"?

A No.

Q Is this your endorsement on the back, "For deposit only, Gramercy Capital"?

A No.

Q I show you Government's Exhibit 61 for identification. What is that?

A This is a deposit slip dated December 9, 1974, evidencing a $15,000 deposit into the account of Gramercy Capital at Branch 171, Mineola branch.

MR. REILLY: I offer in evidence, pursuant to a stipulation that these are bank records of the Manufacturers Hanover Trust Company, Government's Exhibit 61 and 60 for identification.

MR. WEINBERG: No objection.

THE COURT: Very well.

xxx (Government's Exhibits 60 and 61 for identification were received in evidence.)

Q Did John Ebbecke advise you anytime prior to-- at any time up to and including December 9, 1974, that he was going to have a check made out for $15,000 from the Alpha Scaffolding account to Gramercy Capital?

A No.

Q And when for the first time did you learn that $15,000 check had been made out from Alpha to Gramercy?

A This was just before December 20th when I went on a vacation, permanent vacation, and I had gone back to the files. I wanted to see the checks that were being written on the Alpha account, some of which I had written myself. But there were other checks because the balance was coming down on the account.

And the first time I saw this check was in the drawer. I pulled out this check for $15,000 payable to Gramercy Capital.

Q Had you yourself, during this period of time, used the Alpha account to cover up funds that had been debited previously from other accounts?

A Yes.

Q And that included the Cellini account?

A Yes.

Q The Irrigation & Industrial Development account?

A Irrigation & Industrial Development Corp.

Q Did you, during this period of time, write checks on the Alpha account for amounts of $100?

A Yes.

Q And for cash for your own use?

A Yes.

Q During November, did you write out checks to Gerson Fabe and the Connecticut Mutual Insurance Company?

A Yes.

Q Was that for your own personal expenses?

A For the purchase of insurance premiums.

Q Did you have occasion to sign a note in John Ebbecke's presence whereby he was the beneficiary of $10,000 sometime in November of 1975?

A I did not witness John Ebbecke signing--you said "a note"?

A Yes. I will withdraw the question.

Did you enter into an agreement with a person by the name of Gerson Fabe?

A Yes.

Q Did John Ebbecke advise you what the purpose of that agreement was going to be?

A Yes. At that time John Ebbecke was having problems with his boat marina out in Long Island which was in Chapter 11.

Q Was that in bankruptcy?

A A debtor in possession under the bankruptcy laws. For reorganization. And he needed the counsel of some good bankruptcy attorneys and he told me that after he had decided upon Levy, Levy & Rubach, I believe, specialists in bankrtupcy cases, that he needed $10,000 for a fee to be paid to the law firm for handling this matter.

He had talked to Gerson Fabe--

Q Who is Gerson Fabe?

A He is an agent of the Krasne, K-r-a-s-n-e, Agency, which itself is a general agent of the Connecticut Mutual Life Insurance Company in Hartford. Gerson Fabe, to the best of my knowledge, handled life insurance, wrote life insurance for John Ebbecke.

Q Mr. Ebbecke had said he was speaking with Gerson Fabe?

A Yes.

Q What else did he tell you?

A That he needed the money, it was very important for him to have the money so that he could handle this proceeding the best way he could. So Gerson Fabe then came in to me and we had decided or he had decided that he wanted to lend John the money in the form of taking out-- since he didn't have his own money to do it, a personal loan at the Manufacturers Hanover Trust Company. He said to me he would be willing to do it. I told John Ebbecke that he probably could not get any personal loan credit at Manufacturers because of his past problems. And Gerson Fabe would have to be the maker of the personal loan and John Ebbecke would be the co-maker.

Not knowing whether this loan would be approved because I was not in a position to approve personal loans, because I was a commercial loan officer, but I did recommend the loan and the personal loan department of Manufacturers Hanover told me that they had agreed to make the loan for $10,000 to Gerson Fabe, and that while John Ebbecke was the co-signer and also obligated to repay the loan, they would look primarily to Gerson Fabe and his creditability.

I then explained this to John and Gerson and the loan was granted.

But prior to the funding of this loan, Gerson Fabe had asked me, he said he had spoken to John, and he asked me if I could assume some of the exposure of this loan if the loan wasn't paid. So we came to an agreement that I would assume 40 percent and he would assume 60 percent of the exposure. Hence my liability at the most would have been $4,000 and Gerson Fabe's liability would have been $6,000.

We had a meeting at the law office, and I can't recall the name but it was a lawyer who apparently was counsel for Gerson Fabe.

To the best of my knowledge, John Ebbecke was there, Gerson Fabe was there, myself and the lawyer. And a note was drawn up by me payable to Gerson Fabe for $4,000 which represented, again, the maximum liability I had under the obligation.

After that was done, the proceeds of the personal loan at Manufacturers Hanover, represented by an official check of $10,000, was given to Gerson Fabe, a check was made payable to Gerson Fabe, and he then deposited--either deposited the check in his account or endorsed it over to John Ebbecke or Gramercy Capital, I'm not sure.

But the funds went to John Ebbecke.

Q Did there come a time--

THE COURT: Wait a minute.

But the funds went to?

THE WITNESS: John Ebbecke.

Q Did there come a time when you were called upon to make good upon your note for $4,000?

A Yes. The balance of the loan--it was a one-year loan. So the payments were rather high. John Ebbecke had brought the balance down to approximately $3,150, but I had

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been notified by the personal loan department that a lot of the payments were late or some of the payments had bounced, and this, of course, was affecting the credit not only of John Ebbecke but of the primary obligor, Gerson Fabe. Of course, Gerson Fabe was concerned about this. So when the loan had been seriously delinquent for the $3,150, I decided to save Gerson Fabe the embarrassment because he had been phoning me saying, "Well, look, your are responsible for 40 percent of the $3,000. So my exposure was basically $1,200.

But I had said to him, "Gerson, I know what you are going through." As part of the money that went into the Alpha Scaffolding account, the $255,000, I took $3,150, to the best of my recollection, and made out a check, official bank check payable to Gerson Fabe. Gerson Fabe came into the bank and I gave him the check. He deposited the check into his account and wrote his own check to pay off the loan to Manufacturers Hanover, and the loan was paid off.

I subsequently informed John Ebbecke that I had done that and the loan was paid.

Q Did John Ebbecke offer to pay you $3,100?

A No.

Q Has he offered to pay you the $3,150 since then?

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A No.

Q I am going to show you Exhibit 62 and Exhibit 63 for identification and ask you to identify those.

A Exhibit 62 is the official check I made out to Gerson Fabe. It's made out to "G. Fabe" for $3,150 on December 19th, which would have been one day prior to my going on vacation.

I signed the check and gave the check to Gerson Fabe, who in turn endorsed it on the back.

Exhibit 63 is the debit to Alpha Scaffolding Company by--and the offsetting credit of this official check, Exhibit 62, for $3,150, with the notice that it was an official check issued to G. Fabe.

Q And you debited the Alpha Scaffolding account for that?

A Yes.

Q Did you tell Jack Kitson that?

A No.

Q Did he authorize you to debit the account for that purpose?

A No.

MR. REILLY: I offer in evidence Exhibit 62 and Exhibit 63.

MR. WEINBERG: No objection.

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THE COURT: Received.

xxx

(Government's Exhibits 62 and 63 for identification were received in evidence.)

Q Mr. LeVien, during November and December of 1974, did you arrange to make any loans to one Howard Garfinkle?

A Yes.

Q Again, did you use funds of accounts under your control to make those loans?

A Yes.

Q And did the total amount that you lent Howard Garfinkle, was that $250,000?

A Correct.

Q And was the bank ever repaid those loans?

A No.

Q Did Mr. Garfinkle go into bankruptcy in January 1975?

A Yes.

Q Did the corporations over which he had control also go into bankruptcy?

A To the best of my knowledge, yes.

Q By the way, who introduced you to Howard Garfinkle?

A Judah Finerman.

Q Was he the same Judah Finerman who lent $50,000 to Dash Kalal?

A Yes.

Q Is he the same Judah Finerman who lent $10,000 to Mr. Ebbecke?

A Yes.

THE COURT: Also known as Judd Finerman?

THE WITNESS: Yes.

THE COURT: That is the same person?

THE WITNESS: Yes.

Q In December 1974, when you paid this check to Gerson Fabe for $3,150, were you personally indebted in any amount to Mr. Ebbecke?

A No.

Q Did you owe him $15,000?

A No.

MR. REILLY: Your Honor, we have no further questions at this time.

THE COURT: I think this would be a good opportunity for us to take our mid-afternoon recess. It is five minutes of 3:00. We will resume in 10 minutes. Please do not discuss the case among yourselves. Keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

We will resume in 10 minutes and we will recess for the day at 4:15.

(Recess.)

(In open court, jury present.)

MR. REILLY: May I ask one more question, your Honor?

THE COURT: Yes.

FURTHER DIRECT EXAMINATION

BY MR. REILLY:

Q At the time you entered a plea of guilty to the information against you, did the Government make any promises to you?

A No. It was just told to me that at the time of sentencing, my cooperation would be noted.

Q And was it so noted to the sentencing judge, Judge Ward?

A Yes, it was noted to Judge Ward.

Q Was any recommendation for sentence made by the Government?

A No.

MR. REILLY: No further questions.

THE COURT: Mr. Weinberg, you may cross-examine.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. LeVien, just so that we all understand, try to understand what you are telling us took place here, the first situation that came up which was a party by the name of Dash Kalal, is that correct?

A Yes.

Q You are telling us that in order to cover an overdraft in Mr. Kalal's account you shifted money from the Chempar account into his account, is that correct?

A No. The overdraft that occurred in Dash Kalal's account was the result of a deposit of a check of $60,000 drawn on the Pan American Bank and deposited in his account, primarily because I was under the impression that a loan had been granted at that bank. When that deposit was made, the corporate account, Dash Kalal Associates, Inc., issued checks against that, and the checks came into the bank. I paid the checks predicated on that deposit. And when that deposit came back the second time for insufficient funds, that deposit had to be charged to that account, which in effect created an overdraft because I had paid checks against that deposit, thinking that the deposit was good.

Q When the check came back for the first time, you did not think it wise to call Pan American Bank and confirm whether or not a loan had been granted?

A No. I called John Ebbecke.

Q But you did not call the Pan American Bank?

A I didn't call the Pan American Bank until the check was returned the second time.

Q At that point you took it upon yourself to move funds from Chempar into Dash Kalal's account?

A I was under an obligation to repay the Judd Finerman and Henry Levy the moneys that had been extended to Dash Kalal and I had informed John of this, and he offered to help me.

Q This Chempar account that you debited, did John Ebbecke have any connection with Chempar?

A No.

Q Mr. LeVien, with respect to Andy's Marine, Andy's Marine was actually the first corporate account that Mr. Ebbecke brought into the bank, is that correct?

A No. I believe the first--the very first corporate account that was introduced by John Ebbecke to the bank was an account called "International Digest." The next account, I believe, was Cellini. Following after that was either Andy's Marine or Ficarra, one of them. I believe Cellini was before Andy's Marine and certainly before International Digest, which was first.

Q Let me ask you a few questions about Andy's Marine.

The purpose of Manufacturers Hanover advancing money to

Andy's Marine at this time was for a short-term loan, is that what you testified to?

A Yes. It was my understanding that John Ebbecke was helping Andy because Andy had indicated to me he needed short-term money and that it was a small loan of $25,000 and he was hoping to get an SBA loan, that's correct.

Q Were you aware that at the time this loan was applied for and granted, that Andy's Marine was in the process of buying a marina in Freeport?

A Was I aware of it?

Q Yes.

A No.

Q At this point you were already indebted to Cellini for moneys, is that correct?

A At the point of time that Andy Nesbit came into the bank, Cellini was owed some money by me by taking funds out of the account.

Q Were those funds used for your personal use towards the purchase of your home?

A Some of the funds were used--the funds of Cellini directly were not used for the purchase of the house, except the 10 percent down payment of $12,500. The funds of Cellini were used to go into other accounts to offset the

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moneys I had taken out. But primarily the first transaction that occurred in the Cellini account was 52--that was done by me was the $52,000 that went to Chempar on behalf of--for the repayment of that loan that I had guaranteed for Dash Kalal.

Q In other words, to repay the money on the Dash Kalal loan, there was a $70,000 shortage to be made up, is that correct?

A A total of $70,000 which I was responsible for.

Q Was that the first money you took from the bank or misapplied?

A From--

Q From any account.

A Yes, to the best of my knowledge.

Q So it started with $70,000?

A The problem started with the death of Dash Kalal.

Q It started with your taking $70,000?

A Well, taking $70,000 and giving it to others.

Q It grew, then, to $700,000, is that correct?

A Yes. It grew approximately to $675,000.

Q Now, with respect to Ficarra, Mr. Leone came into the bank and wasn't there a credit line of $150,000 extended to Ficarra?

A Actually, I told Frank Leone we would grant him $90,000 and Frank Leone asked me at the time if he could have additional moneys. He would like to get a $150,000 credit line. In other words, another $60,000 in addition to that.

And I took it upon myself to say that I didn't foresee any problem in giving him the additional funds. We gave him the $90,000. Then I phoned him up and told him that I had discussed the situation with one of the other officers at the bank and we had agreed to make or increase the line to $150,000. So I told him that we had done this. But then a situation arose which had nothing to do with the situation we are discussing today, which caused us to withhold that amount of money, that additional $60,000, until the company established a little bit more of a track record with us.

Q Isn't it a fact that $75,000 you put through the Gramercy Capital account, $68,000 of which was immediately transferred to Ficarra, and wasn't that done in that unorthodox way as a payment of the balance of the line of credit because you were in New Jersey on a particular day when Mr. Leone needed the rest of his money?

A No. At that time I had taken $60,000 of Ficarra's money. Cellini, Frank Lettieri was upset that he needed additional funds and I had told Frank Leone that while we had approved the $150,000, that a problem had developed because of his former accountant, which he was aware of because I told him, and I told him that the additional fund would have to wait until the company established a bit of a track record.

Of course he was concerned. He thought he had the additional funds and I felt bad for him because I told him he did, until this unfortunate thing happened at the branch. But it was my concern because Ficarra Furniture was writing checks because they felt they had the money and they didn't, that I had to get some money into the account. But at that time my credit line was $75,000, that is, what I could approve myself, and so I couldn't go over $75,000.

Cellini Furniture needed $25,000. So the only reasoning I had was to give Cellini the $25,000 and I felt an obligation to the man because in effect I had purchased my house through his account and he had given me the 10 percent down payment, so there was a bit of an obligation I felt on my part. Plus Ficarra was screaming for money.

So by taking $75,000 I could give $25,000 to Cellini and the balance, or $50,000, to Ficarra, which would have still left Ficarra $10,000 short. As the records indicate, Ficarra received the difference minus $1,000. So they got the benefit of $49,000 and Cellini got the benefit of the difference.

Q So it is my understanding that Ficarra got $68,000?

A Ficarra got $68,000, but I discussed with John, because at the meeting, Frank Lettieri needed an additional $25,000, and I told John that when they brought the check in to Ficarra, to go see either the bookkeeper or Frank and to give him the money and say there was a mix-up in the account and that Ficarra, because they are both in the furniture business, there was a mix-up, so that Ficarra had to issue a $25,000 check to Cellini, which it did and which I deposited.

Q In every other instance that you testified to today where funds were shifted from one account to another, it was shifted directly from Chempar into Cellini, from Andy's Marine into Cellini, and that could have been done here, couldn't it?

A I didn't want to have it done there for the simple reason that Chempar, first of all, was a fairly medium-size account which I had brought into the bank. It was well-known to all the other officers at the bank because it was such a good and safe account. And all its transactions were always looked upon, favorably. I could not justify a transaction from a very well-known account, which is basically Industrial Design, Industrial Engineering, of that magnitude, going to a furniture company or any other account at the branch which somebody would be familiar with.

However, if the transaction were to go from Chempar to Gramercy Capital, it would not raise suspicion in my mind because nobody at the branch knew Gramercy Capital. There was a lot of activity in the Chempar account, that's specifically why I wanted to use another account.

Q With respect to Mr. Kotch, you testified that Mr. Ebbecke called you on the telephone to set up a meeting between you and Mr. Koch.

A Yes.

Q And Mr. Koch had $255,000 that he had as a result of the proceeds of the sale of a business and that he wanted to invest it in a CD, is that your testimony?

A My testimony was that John Ebbecke had told me that he had met a gentleman, Karl Koch, who had just sold a business and received partial proceeds of $255,000, and that Mr. Koch was looking to purchase a certificate of deposit and he was shopping around at the banks to get the most competitive rates because the rates on such instruments changed daily.

I subsequently met Mr. Koch with John Ebbecke at Gatsby's under that pretense.

Q How long before the meeting did Mr. Ebbecke telephone you with this information and with the request to set this meeting up?

A I can't say offhand, because I had numerous conversations with John. It could have been a day, could have been a couple of days.

Q But it was not the same day?

A I'm not sure.

Q But he did tell you about this prior to the meeting?

A Yes.

Q And you then took the proceeds of that check, took the check and deposited it into the Alpha Scaffolding account after Mr. Koch gave it to you?

A That's correct.

Q Can you tell us what happened to the bulk of that money, the $255,000?

A Well, without having my exact records here, I can tell you that it went into various accounts that needed to get funds. I know $50,000 of it went down for the benefit of Howard Garfinkle for an obligation he had with a gentleman by the name of Sam Cohen down in Florida, who who I don't know. Some money undoubtedly went into the accounts of Cellini or Ficarra or whatnot.

Q This Garfinkle that you mentioned, he had nothing to do with Mr. Ebbecke, did he?

A That's correct.

Q Did Mr. Kitson ever give you signed checks drawn on the Alpha Scaffolding account for your own use?

A What do you mean by "signed checks"?

Q Blank checks just signed by him.

A Counterchecks, you mean?

Q Any kind of checks.

A To the best of my knowledge, no.

Q During the period covered by your testimony, July or August 1974 through December of 1974, did Mr. Ebbecke bring accounts into your bank that were turned down for loans?

A Yes. There was one account early that was turned down. Western States Trading Company. That company was looking for a letter of credit, but I just turned down the credit.

Q Wasn't Mr. Ebbecke dealing with other banks as well as yours?

A Yes, that was my understanding.

Q But it was you who introduced Mr. Finerman to Mr. Ebbecke, is that correct?

A That's correct.

Q Mr. LeVien, you have confessed to [illegible]zling and misapplying close to $700,000 from Manufacturers Hanover Trust Company, is that correct?

A That's correct.

Q And you have been sentenced and you are now in jail for that crime?

A Excuse me?

Q You have been sentenced by Judge Ward and you are now in jail for that crime?

A On September 21st I was sentenced by Judge Ward to one year and one day.

Q And you are presently in jail?

A Yes.

Q Have you made an application for parole?

A I have already been before the parole board.

Q Do you think that any testimony you give here today will be helpful in seeking parole?

A No, because I have already been denied parole.

Q But your application will be coming up again?

A No, it won't.

MR. WEINBERG: I have no further questions at this time.

MR. REILLY: Your Honor, I have no redirect examination.

THE COURT: Thank you, sir.

(Witness excused.)

MR. REILLY: Your Honor, may I have a side-bar conference?

THE COURT: Yes.

(At the side bar.)

MR. REILLY: Your Honor, I apologize to the court, but I thought Mr. LeVien would be into tomorrow morning so I do not have any other witness. I will, accordingly, have all witnesses here tomorrow. So that it appears we will be able to finish the Government's case tomorrow.

(Discussion off the record.)

(In open court.)

THE COURT: Ladies and gentlemen, I have conferred with counsel and I have determined, after having conferred with both counsel, that we have reached a point in the case where it would be well for us to take our recess, so that instead of your leaving here at quarter past 4:00, you will be leaving here at approximately 20 minutes of 4:00.

I am hopeful that the weather will be reasonably good and you will return tomorrow.

We will resume promptly at 9:30 a.m. tomorrow morning. Our schedule tomorrow should roughly take us from 9:30 to 12:30 with an hour lunch break and then pick up again with something like 1:30 to 4:30. I like to break the day into parts that way. If it is a ten o'clock start, I break a little bit differently.

As you go home now, please, do not discuss the case among yourselves or with anyone else on your way home, when you get home or when you come back home from home on the bus or subway tomorrow, if you should meet or ride down with a friend.

Should you learn anything about the case from any source outside the courtroom, you are directed to report the matter to me at once promptly upon your return.

Finally, I direct that you keep an open mind, please keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

The jury is excused. You are directed to reassemble in your jury room tomorrow morning at 9:30 a.m.

Counsel will please remain for a moment or two until the jurors have left the courtroom and have

(Continued on page 165.)

left the floor, then you are excused as well.

(An adjournment was taken to January 25, 1977, at 9:30 o'clock a.m.)

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UNITED STATES OF AMERICA

vs. 76 Cr 999 (RJW)

JOHN M. EBBECKE

New York, January 25, 1977,

9:30 a.m.

Trial resumed.

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(In open court, jury present.)

THE COURT: Good morning, everyone. The snow did not turn out to be as bad as we feared and I see everybody is here. We have a slight delay in beginning, but everyone looks health, so we will get started. You may proceed, Mr. Reilly.

MR. REILLY: Your Honor, the Government calls Frank Leone.

FRANK LEONE, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Leone, what is your business?

A Ficarra Furniture Company.

Q Are you an officer of that company?

A Yes. I'm the president.

Q And how long have you been in the Ficarra Furniture operation?

A In the furniture business, 20 years, and Ficarra about 15 years.

Q Where is that located?

A Ozone Park on Woodhaven Boulevard.

Q In 1974, were you looking for financing for Ficarra Furniture Corporation?

A Yes, I was.

Q Did you have occasion to meet a person by the name of John M. Ebbecke?

A Yes, sir.

Q And when did that take place?

A Sometime among that year, along that time.

Q How--

THE COURT: "That year" being 1974?

THE WITNESS: Yes, your HOnor.

Q And how was it that you met John Ebbecke? Can you explain the circumstances?

A I met him--I met him through a--through somebody, conversation or somebody, and John came down and talked to me.

Q And what did you talk to him about?

A About financing.

Q Did you present him with a financial statement?

A Yes. He looked at it.

Q What did you tell him you wanted in the way of financing?

A $150,000, $200,000.

Q What was the purpose of the financing? Did you tell him?

A Yes. To put into the business to buy goods.

Q What did he say with respect to your company's chances of getting financing?

A He said not--that it will be a little difficult with this statement now, these loans and everything, and he can't help a retail business, mostly in the wholesale, so that was the end of it.

Q Did there come a time when you heard from John Ebbecke again?

A Yes. He says that, "Well, why don't we try again? I think we can get you a loan."

Q How soon after the time when he told you you could not get a loan did you hear from him?

A Mr. Reilly, I think it was about two, three, four months, something like that, after he told me.

Q When he said he was going to try again, what did you tell you?

A I said, "Okay."

Q Did he give you any indication where he was going to take you?

A Yes. He told me he was going to take me to

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Manufacturers Hanover Trust.

Q Did you go to Manufacturers Hanover Trust?

A Yes, I did.

Q Did you meet with anybody there?

A Yes. I met with an officer of the bank, Frank LeVien.

Q Where did you meet him?

A At the main branch, I think on Madison Avenue and 42nd Street, I think it is.

Q Did you ever go to a restaurant called "Gatsby's"?

A Yes. I was there once, twice.

Q Did you eat with Mr. LeVien and Mr. Ebbecke at that restaurant?

A Mr. Reilly, I first went to the bank, I spoke to Mr. LeVien on a loan, I was there alone. Then I don't remember if I went to the--I don't remember if I went to the restaurant or not. I could have, but I don't remember.

Q What did Mr. LeVien say with respect to your financing?

A He says that he reviewed my application and reviewed my financial statement and on the strength of this that they will loan me $90,000.

Then I met with the president of the bank there.

THE COURT: The president of the bank or the manager of the branch?

THE WITNESS: The manager of the branch. The president of the branch or the manager of the branch.

Q Were you granted the $90,000?

A Yes, I was.

Q Did you give authority to Frank LeVien or to anyone else to make debits from that account for purposes other than the Ficarra Furniture business?

A No, I didn't, no.

Q Did you advise John Ebbecke that he could arrange to make any such debits?

A No.

Q Did you open a checking account with the Manufacturers Hanover Trust Company?

A Yes, I did.

Q Was that in connection with the granting of the $90,000 loan?

A No. It's a procedure that you open the account so they could, you know, that they could put the money into your account and open the bank account.

Q Did you begin to draw checks on the new bank account, checking account?

A Yes, I did.

Q Did there come a time when your checks were coming back?

A They were coming back--they were coming--some checks were bouncing and some checks were coming back uncollected, they were charging my account $10, $5, like that.

Q Waht did you do?

A I called Mr. LeVien, spoke, spoke to Mr. LeVien. He said, "Don't worry about it, it's a mistake someplace, they will correct it."

Q You say you spoke with Mr. Ebbecke?

A No, Mr. LeVien.

Q Did you make any complaint to Mr. Ebbecke in connection with this?

A I think maybe once I called John on it and said, "What's going on?" like.

But most of the time the accountant in the bookkeeping department handled it direct through the bank.

Q Did there come a time when John Ebbecke--

THE COURT: Just a minute. Let us stop there a moment.

You think it was one time you spoke to Mr. Ebbecke and you asked him, "What's going on?"

THE WITNESS: Yes.

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Q What did he say?

THE COURT: Did he say anything?

THE WITNESS: He said he will check. It probably is nothing, he will check it with Frank and see what's what, you know.

THE COURT: Did you have a subsequent conversation with him?

THE WITNESS: No.

Q Did there come a time shortly thereafter when there was a meeting at Ficarra Furniture involving John Ebbecke and Frank LeVien?

A I don't know if there was a meeting, but they all gathered there. They all came there one night.

Q Do you recall who was present?

A John Ebbecke, Frank LeVien, Frank Lettieri and another gentleman. I forgot his name.

Q Can you--

A Mr. Kitson, something like that.

Q Did you participate in the discussion when they came?

A No. I walked out. I was with customers at the time.

Q Did you make any statement concerning the status of your checks that were coming back?

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A Yes. I says I just want my money put back, whoever took it, whatever is going on, and I walked out, that was it. I got busy with customers and that's it, and when I went in everything was--I don't know. They were standing up and that was the end of it.

Q I am going to show you Government's Exhibit 43, which is in evidence. It is somewhat faint, but I am going to direct your attention to the third check photograph there (handing).

That is a check for $68,000 made out to Ficarra Furniture Corporation by Gramercy Capital, is that correct?

A Yes, sir.

Q As of September 13, 1974, did Gramercy Capital owe Ficarra $68,000?

A No, sir.

Q Did Gramercy Capital owe Ficarra anything as of September 13, 1974?

A No, sir.

Q On or about September 13, 1974, did you see that check?

A No, sir.

Q When did you become aware of a deposit to Ficarra from Gramercy Capital for the first time?

A Frank LeVien told me.

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Q When did he tell you that?

A He called me up on the phone and says that, "The money was put in a different, wrong account, but we put it in the right account," and that was it. I didn't even ask where it came from.

Q When did you learn that the check of Gramercy Capital was making the deposit into your account?

A Frank LeVien told me.

Q He told you that Gramercy Capital was being used?

A Right.

Q I am going to show you a deposit slip, Government's Exhibit 44 in evidence (handing).

Did you participate in any way in making that deposit?

A No, sir.

Q Did you pay John Ebbecke or Gramercy Capital a fee in connection with the obtaining of the $90,000 loan?

A Yes, sir; $2,500.

Q Did you pay that to Gramercy Capital by check?

A I made a check out to Gramercy Capital for $2,500.

Q Was that in full payment of your obligation to John Ebbecke?

A Yes, sir.

Q Did he ever ask you for any other money?

A No, sir.

MR. REILLY: No further questions.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Leone, when you first went to the Manufacturers Hanover Trust Company with Mr. Ebbecke and you met with Mr. LeVien, didn't you also meet with a Mr. Eichler?

Was there another officer of the bank present at that meeting?

A No, sir.

Q When you discussed the loan with Mr. LeVien, did Mr. LeVien offer to get you a line of credit of $150,000 with the bank?

JUROR NO. 9: Judge, we can't hear him.

THE COURT: All right.

First we are going to have the court reporter-- no, no, you go back. Then others won't hear you.

First we are going to have the court reporter read back the last three questions and answers so the jury has everything and then I am going to ask you, Mr. Weinberg, to please keep your voice up so that everyone in the courtroom forward of you, since you are at the back, can hear you.

Mr. Reporter.

(Record read.)

A I don't recall at that time when I went to the bank. The only thing I know I got $90,000. The loan originally was put in for $150,000.

Q There was an application for $150,000?

A I believe it was. I'm not positive of it.

Q Against which they gave you initially the $90,000 loan, is that correct?

A Yes, sir.

Q Now, when you began to notice shortages in your account, you went to Mr. LeVien?

A Oh, sure. My accountant did, too.

Q At any time did it occur to you to report this to any authorities, any of Mr. LeVien's superiors at the bank?

A Well, Mr. LeVien was a vice president of the bank and I thought he had the power. He goes up to a million dollars credit line. So I was in the bank at the time. My accountant's office is right across the street, my accountant Max Imland, went there three or four occasions. Mr. Lyons saw me every time I was there and said hello to me. He was the manager, the president of the bank or the manager of the bank.

Q Was Mr. Lyons aware that he knew the condition of your account?

A I don't know if he was aware of the account, I never would report to him.

My senior loan officer was Frank LeVien.

Q When you did speak to Mr. Ebbecke about the condition of your account, he said he would talk to Mr. LeVien?

A I think he said that, yes.

Q Did he suggest to you to go to the bank and try to straighten it out?

A Oh, sure. John said, "Yes. Call Frank up. He's the boss of the bank there, I mean, he's the vice president of the bank."

Q Did there come a time, after you received the $90,000 loan, when you were seeking the additional moneys that you had originally applied for?

A Excuse me, could you repeat that question?

Q In other words, you had originally made an application or sought from the bank $150,000?

A Yes.

Q And they gave you $90,000?

A Yes.

Q Did there come a time, subsequent--

A They didn't give it to me, they lend it to me.

Q Loaned you $90,000. Sorry.

Did there come a time, subsequent to that, when you sought to borrow the additional moneys?

A I received a call from Mr. LeVien saying that he would give me the additional 50 or 60, whatever it was.

We went down there, we saw Mr. Lyons. Mr. Lyons then took Mr. LeVien, myself and my accountant downstairs into the board room and said, "At this time, Mr. Leone, we like doing business with you, you have a nice business and everything, but at this time we would like to have a little more history about you before we extend the $60,000. At this time, we would rather see how you do in the next six months or five months and then we will have another meeting."

THE COURT: When was this meeting that you just described, or approximately when?

THE WITNESS: I would say, like, a couple of months after the loan, after the loan was taken, the $90,000, so it's got to be somewhere around there.

Not a couple of months, maybe a couple of weeks. I can't recall exactly, your Honor.

THE COURT: Can you give us an approximate time of year, month or season?

THE WITNESS: Well, it's got to be sometime in the--the loan was taken out, I believe--could you just give me the date on that, when the loan was taken out?

The loan was paid, too, your Honor.

Is that August 31, Mr. Reilly?

MR. REILLY: Excuse me.

THE COURT: That is all right.

MR. REILLY: I think we can stipulate, your Honor--

THE COURT: Why don't you speak to your adversary first and if you are in a position to stipulate, I am sure you will, both of you. If not, we can just go on.

Q Mr. Leone, was that two or three months prior to September of 1974?

A I would say, sir, anywhere between a month or two months, something like that.

Q Isn't it a fact that this deposit of $68,000 was the balance of that credit line which you had drawn against?

A No, sir.

Q Didn't you at any time call Mr. LeVien and demand the balance of that credit line from him?

A No, sir.

How could I demand that when I went to the bank and the bank already met with my accountant and everything and told me they were going to have to see how I go?

MR. WEINBERG: I have no further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q I would just like to show the witness Government's Exhibit 32 for identication.

Does this refresh your recollection as to the date that the loan of $90,000 was made?

A $90,000?

Q Yes.

A Yes.

Q When was that?

A It says "Deposit" on--

THE COURT: No. Do not read what it says.

Now that you have looked at it, if it refreshes your recollection, tell us what from your refreshed recollection.

THE WITNESS: Yes.

$90,000 was given to me by Manufacturers Hanover Trust sometime in August the 29th, around there.

Q And is it your testimony that you did have further negotiations with respect to an additional $60,000 line of credit?

A Yes. That was the original line. They only gave me 90, then they said they would consider me for the other 60.

Q Did there ever come a time when you were given an additional $60,000 line of credit?

A No, sir.

MR. REILLY: No further questions.

MR. WEINBERG: No further questions.

THE COURT: Thank you very much.

You are excused, sir.

(Witness excused.)

MR. REILLY: Your Honor, may we have a side bar?

THE COURT: Yes.

(At the side bar.)

MR. REILLY: Your Honor, our next witness is David Kaplan.

I have provided the 3500 material to Mr. Weinberg and I have advised him before the trial that there would be similar act testimony.

This is one of two witnesses concerning similar act testimony. They really relate to a single transaction at the Hempstead Bank in late March of 1974.

That would, of course, if your Honor allows the testimony, which we strongly urge that you do so, that the jury be so advised that it will be received for that purpose.

THE COURT: Do you have a suggested instruction?

Because I do believe that if it is received there should be a limiting instruction to the jury.

MR. REILLY Your Honor, we have included in our requests to charge an instruction with respect to that. It is towards the end.

It goes to the issue of intent, your Honor, because basically, as I understand the defense here, it is Mr. Ebbecke's contention that he may have been present or he may have been involved with Mr. LeVien but he did not know what LeVien was doing.

I think the intent and knowledge are squarely present.

THE COURT: Let me hear from Mr. Weinberg.

MR. WEINBERG: If your Honor please, naturally I am going to object to any such testimony.

Number one, I do not know whether the acts which are going to be testified to are really similar in nature to the ones charged and, number two, Mr. Reilly has advised me that there is a grand jury in Eastern District hearing testimony and there may be an indictment with respect to these very acts.

The acts themselves, there has never been any proof of guilt as far as Mr. Ebbecke is concerned regarding these acts, so what we are doing is trying two cases today

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isntead of one and the introductionof such evidence is highly prejudicial in this case.

THE COURT: Let me have an offer of proof from the Government regarding the nature of the acts which are alleged to be similar acts.

MR. REILLY: All right, your Honor.

The witness, David Kaplan, will testify that he met an associate of Mr. Ebbecke, James Feeney, and he subsequently had discussions with James Feeney and John Ebbecke for financing on the order of $500,000.

He had a letter of commitment drafted by Mr. Ebbecke and Mr. Kaplan's attorney providing for this $500,000, and this letter was delivered to him signed by a Lester Wadsworth, purportedly a Lester Wadsworth on the stationery of the Hempstead bank.

When there was some doubt in Mr. Kaplan's mind as to eventhe existence of a Mr. Wadsworth, he went, he, Kaplan, went to Ebbecke's office and Wadsworth was produced and he initialled a second letter of credit to the amount of $200,000.

Mr. Lester Wadsworth, our second witness, will testify he never signed those documents and, in fact, it had been acknowledged to him by Feeney and Ebbecke that it was just a draft or it was just a stalling action and the letter of credit was withdrawn.

Mr. Lester Wadsworth will also testify that he was given $2,400 by John Ebbecke and he, Wadsworth, had signed this letter of credit or initialled it when he knew it was not for his accommodation to Ebbecke.

THE COURT: How is it translated to a similar act in connection with the charges in this indictment?

MR. REILLY: We are basically talking about mismanagement of funds by bank officers and here we have a bank officer who was corrupted by Ebbecke, we submit; we have a fraudulent letter of credit or lending transaction to which Mr. Ebbecke was a part as a stalling action.

It is quite similar to this pattern of borrowing funds, misapplying funds to cover up accounts.

The $225,00 CD, for example, where Mr. Karl Koch came in and according to the testimony of LeVien he was told by Ebbecke, "You can just hold it, put it into another account and we will take care of Koch later."

It is similar in that regard.

THE COURT: I wonder if this would not better be left for rebuttal. I would permit you to cross examine the defendant. His attorney has indicated he intended that he take the stand. If he does and denies any participation in these acts, you could inquire about his participation in similar acts and I think this would not be extrinsic evidence which would be barred at that time.

I have some reservations about letting the testimony in at this time. I see your point. But it does not involve, as I understand it, embezzlement from the Manufacturers Hanover.

MR. REILLY: No.

THE COURT: And I am not quite sure if I understand that it involves embezzlement from another bank.

It does appear to involve a form of commercial bribery, to wit, the payment to employees of another of sums of money.

In our case, as I understand the proof, Ebbecke did not pay money to LeVien but, rather, LeVien paid money to Ebbecke.

I have difficulty seeing "similar" acts.

MR. REILLY: These are fraudulent financial dealings.

The fact that a letterhead was taken from the Hempstead bank, a letter of commitment and then a letter of credit to the tune of $200,000 purportedly signed by Lester Wadsworth, was handled by Ebbecke and delivered to Mr. Kaplan suggests fraudulent banking activities, or at least a knowledge of fraudulent banking activities.

Commercial bribery just shows knowledge.

When Mr. Kaplan raised questions about it, then they had to involve Mr. Wadsworth and he came up and was prevailed upon to initial the letter.

So the emphasis here is the fraudulent financial transaction, a totally bogus letter of credit authorized by Mr. Ebbecke on Hempstead bank stationery.

Surely this shows Mr. Ebbecke is not somebody who was duped in his dealings with Mr. LeVien.

THE COURT: Doesn't he have to say that in the first instance before it becomes relevant here?

MR. REILLY: He has raised it on his cross examination and he has raised it even by his statement to your Honor as to the theory of his defense.

He may never call Mr. Ebbecke as a result of this disclosure now.

THE COURT: That is possible. That is possible.

MR. REILLY: That is correct. And that leaves the Government in a position where Mr. Weinberg is still in a position to argue the creditability of Mr. LeVien and there is an absence of corrobating testimony that Mr. Ebbecke was a dealer or somebody who engages in false financial activities.

MR. WEINBERG: Judge, this other charge involves

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a charge of forgery.

MR. REILLY: The question is not forgery, it is a false financial dealing.

MR. WEINBERG: There was a forged signature on it, from what I understand.

MR. REILLY: Yes.

MR. WEINBERG: It really is not a similar transaction to this at all.

MR. REILLY: It is just a different way of hoodwinking these customers.

THE COURT: That takes away from the argument of similarity. That is my problem.

MR. REILLY: It is not totally similar. It is not the same, it is a similar fraudulent dealing.

I do not think it has ever been held it has to be the exact same crime.

THE COURT: No, I do not necessarily think it is.

MR. REILLY: It is the same sort of behavior.

THE COURT: But it is--

MR. WEINBERG: Secondly, if your Honor please, to admit such testimony in this trial would highly prejudice Mr. Ebbecke in any forthcoming proceedings in the Eastern District.

THE COURT: I would put that aside. If that is your argument, you can put it into the record.

MR. WEINBERG: No. That is one of my arguments.

THE COURT: I won't accept it.

No, I am troubled and I am trying to think through what we have here.

Are you saying in the Kaplan transaction, Mr. Ebbecke arranged a bank loan with a dishonest bank employee who he aided and abetted in defrauding or attempting to defraud another bank? Is that what you are saying?

MR. REILLY: No, not exactly.

THE COURT: Because that would be a similar act. I would have no problem with that.

MR. REILLY: No.

I am saying that Mr. Ebbecke was given $10,000 by Mr. Kaplan to go find a loan. Instead of finding a loan, he engaged in this same sort of activity that he engaged in with Karl Koch, that is to say, he just took the $10,000, he fabricated a phony letter of credit, a phony letter of commitment, and apparently was using that period to get financing elsewhere.

Mr. Lester Wadsworth has no authority, and he will testify, to grant letters of credit or letters of commitment in that amount. That, of course, wouldn't be known to Mr. Kaplan.

It is part of a Peter-to-Paul proposition that is shown in the LeVien transactions.

THE COURT: What was the time frame of the Kaplan transaction?

MR. REILLY: March of 1974. Now, this is a period when he was dealing with Dash Kalal and LeVien.

The testimony is that LeVien met with him in late 1973 or early 1974 and started to engage in various transactions.

Apparently the conspiracy, however, dates from June 1 of 1973, at least as alleged in the complaint.

THE COURT: So you are saying this is a prior similar act?

MR. REILLY: That is correct.

THE COURT: I must say, I have difficulty in seeing the similarity of the act as you have described it, at least on the basis of the record as I now view it.

MR. REILLY: It goes to the issue, your Honor, of knowledge.

THE COURT: Knowledge of what?

MR. REILLY: Knowledge that LeVien was using these accounts and that Mr. Ebbecke was continuing to bring other accounts in to fill the void.

Mr. Leone has testified that Ebbecke just brought him in. There was no statement by Leone--

THE COURT: But Kaplan had no connection with Manufacturers Hanover?

MR. REILLY: None at all.

THE COURT: Wadsworth had no connection with Manufacturers Hanover?

MR. REILLY: Right.

If the record showed that Mr. Ebbecke was an honest dealer in obtaining loans, the jury--or if there was no evidence one way or the other, the jury could infer that this is incredible behavior.

However, if there is evidnece to show that Mr. Ebbecke was a wheeler-dealer, in fact, completely violated the rules of normal banking practice, in fact, created forged letters of credit, then they could consider that with respect to his knowledge of whether he, in fact, knew what was happening to the Ficarra loans, the Cellini loans, the Alpha loans, etc.

THE COURT: I am going to sustain the objection to the line of inquiry you have proposed at this time.

I want to make it quite clear to both counsel that in the event Mr. Ebbecke testifies, I will permit this inquiry on cross examination, and I would permit this evidence in rebuttal if he should make statements which are contrary to what the Government believes to be the fact.

I do not believe that this would be such extrinsic evidence as would be barred or where the Government would be bound by Mr. Ebbecke's answer.

I frankly have difficulty in seeing these as similar acts.

Similar acts would include Alpha, it would include Ficarra, would include the other transactions which were shuffled in and out of the Manufacturers.

If a similar shuffling in and out of accounts was carried out at another bank at approximately the same time, before or after, I would allow that testimony.

I have difficulty at this juncture in seeing the acts as similar and believe, also, that at this juncture admitting this evidence would produce confusion in the minds of the jurors which, at least in my judgment, would be prejudicial to the defendant.

The application to prove this, present this similar-act evidence is denied.

MR. REILLY: All right.

THE COURT: Off the record.

MR. REILLY: I will have to ask Mr. Holbrook to let Mr. Kaplan go.

THE COURT: Off the record.

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(Discussion off the record.)

THE COURT: As you observed, ladies and gentlemen, we had a discussion out of your hearing. It was to talk to counsel at the side bar on a legal matter.

This is one of the court's responsibilities, to hear and rule on questions of law. It is and should be no concern of yours. Your concern is with the facts as they are presented by the witnesses and in the exhibits.

We are just waiting a moment for the next witness to be brought to the courtroom.

(Pause.)

MR. REILLY: Your Honor, at this time the Government would like to move in evidence by stipulation copies of bank records that have been supplied by the bank and by the accounts involved.

Mr. Weinberg, for the defendant, has stipulated to their being admitted as official business records.

THE COURT: Very well.

MR. REILLY: Government's Exhibit 32 for identification--

THE COURT: That is the one you had marked already. Why don't we get some identification of that and then you can proceed to the others.

MR. REILLY: Let me just state, Government's

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Exhibit 29 for identification is the monthly statements for Cellini Furniture Corporation from the period July through December 1974.

Government's Exhibit No. 30 are the monthly statements for Andy's Marine Service Company, Inc. during the period August through December 1974.

Government's Exhibit 31 for identification are the monthly statements for Alpha Scaffolding and Equipment Corporation for the period August through December 1974.

Government's Exhibit 32 already referred to are the monthly statements of Ficarra Furniture of Queens, Incorporated for the months of August through December 1974.

Goverenment's Exhibit 33 for identification are the monthly statements for Gramercy Capital, Ltd. for the period July through December 1974.

And also Government's Exhibit 37 for identification, the September and October monthly statement of 1974 for Chempar Chemical Corp.

The Government offers these exhibits in evidence.

THE COURT: That is 29, 30, 31, 32--is it 33 and 37?

THE CLERK: 33 and 37, yes, sir.

THE COURT: I understand there is no objection.

MR. WEINBERG: No objection, your Honor.

THE COURT: Received.

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(Government's Exhibits 29, 30, 31, 32, 33 and 37 for identification, respectively, were received in evidence.)

THE COURT: 33 is Gramercy?

THE CLERK: Yes.

THE COURT: And 37 is Chempar, is that right?

THE CLERK: Chempar, right.

THE COURT: Very well.

MR. REILLY: Your Honor, may I call the next witness?

THE COURT: Yes.

MR. REILLY: The next witness is Karl Koch.

KARL KOCH III, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Koch, in the latter part of 1974, what was your business?

A I was a--I was in the steel erection business.

Q What was the name of that company?

A Karl Koch Erecting Company.

Q And did there come a time when you sold out your interest in that company?

A Yes.

Q About what time was that in the year 1974?

A It was on October 2nd, 1974. It was when I actually sold out the company.

Q As a result of the sale of your interest in the company, did you come into a large amount of money?

A Yes.

Q On the order of what amount?

A About $600,000.

Q Did you have occasion to meet an individual by the name of John Ebbecke at or about that time?

A Yes.

Q And what was the purpose of your meeting with Mr. Ebbecke?

A It was to advise me into tax shelters for the money that I had.

Q And did you disclose to Mr. Ebbecke the amount of money that you had come into?

A Yes.

Q Did you discuss with him various alternatives for investing your money?

A Yes.

Q Did John Ebbecke ever introduce you to an individual by the name of Jack Kitson?

A Yes.

Q Can you recall about what time you met Kitson, what time of the year?

A Yes, I can. It was about--about November 1st, 1974.

Q And at that time, did Mr. Ebbecke tell you, advise you whether or not, how Mr. Kitson was employed?

A Yes.

Q How was he employed?

A He told me that he was an owner, part owner, as I recall, and I believe he told me he was an officer of a scaffolding company.

Q Did you and Mr. Ebbecke meet with Mr. Kitson for breakfast or some meeting of that sort?

A Yes.

Q At that meeting, was there any discussion about the possibility of your investing in Alpha Scaffolding Company?

A The possibility was discussed, yes.

Q Did you come to meet a gentleman by the name of Frank LeVien?

A Yes.

Q And when did you meet Mr. LeVien?

A On December 4th, 1974.

Q Where did you meet Mr. LeVien?

A I met him in a restaurant in New York City called "Gatsby's"--I believe the name was Gatsby's on Madison Avenue and 41st Street.

Q Who was present?

A Mr. Ebbecke, Mr. LeVien, myself, my then partner, Joseph Sherry, Mr. Ebbecke's chauffeur, John--I don't remember his last name--Mr. Kitson that you mentioned, and there were two other gentlemen there that I was introduced to--this was one of three occasions--and I believe their names were--one was a rabbi, I forgot his name, and the other was a man that was offering me some kind of tax shelter in some apartment house. I think his name was something like Goldfarb or something like that. I can't recall exactly.

Q Does the name Howard Garfinkle mean anything to you?

A Yes, sir.

Q Does the name Judd Finerman mean anything to you?

A He was the rabbi, Mr. Finerman.

Q On December 4th, 1974, prior to meeting with

Mr. LeVien and the others at the Gatsby's Restaurant, did you have occasion to go to the Marine Midland Bank?

A Yes.

Q What did you do there?

A This was the--the last time I was there was on December 4th at about ten o'clock in the morning.

At that time, I cashed in a CD that I had at that bank at that time.

Q And prior to December 4--

THE COURT: When you say a "CD," do you have a reference to a certificate of deposit?

THE WITNESS: Yes, sir.

Q What is a certificate of deposit, to your understanding?

A It's a--it is a bank certificate which gives you a fixed interest for a fixed period of time. It is a form of investment.

Q During the period while you had this money in the Marine Midland Bank, you had been talking to John Ebbecke, is that correct?

A Yes.

Q Had you advised him that you had purchased CD's with some of the funds?

A No--oh, in general, yes.

Q I am going to show you Government's Exhibit 56, which is in evidence (handing).

Can you identify that? Have you seen it before?

A It's got a cover on it?

I can't see it too clearly.

This is the CD that I took from the Marine Midland Bank on December the 4th.

Q When you say--

A This is the check that I received from the Marine Midland Bank on December the 4th.

Q That is when you cashed your CD in?

A Yes, sir.

Q Did you have occasion to go to the Manufacturers Hanover Trust Company on the same--

A I didn't hear that.

Q Did you have occasion to go to the Manufacturers Hanover Trust Company on December 4th, 1974 after you went to lunch at Gatsby's?

A Yes.

Q Tell us what happened.

A At 2:30, I was at the Gatsby Restaurant and it was my intention to buy a CD at Manufacturers Hanover.

I announced my plans to leave the table and go to the bank.

LeVien had left the table approximately a half hour before I did and it was getting very close to three o'clock, it was 2:30, and I was very interested in getting that check deposited so that I could have interest from that day for the next 30 days.

As I said, I announced my intentions to go to the bank, and Mr. Ebbecke asked me if I would like someone to escort me to the bank.

I said "No."

And he said, "You won't be able to find it. I insist that someone follow you."

I said, "No, that's okay."

And as I was leaving, he instructed one of two people, and I can't exactly remember who it was, to show me the way to the bank.

Q Do you have any recollection as to who of the two people might have been--

A It was either John the chauffeur or it was Jack Kitson.

Q What happened when you left Gatsby's?

A We went down the corner to the bank, which was only a half a block away, we went into the bank, and the person that was with me directed me to the desk of Frank LeVien.

At that point I asked him to return to the restaurant, and he said it would be all right, he could stay.

I said, "No, it's not important. I wish you would go back." And he did go back.

Then I spent the next 45 minutes with LeVien.

Q Did you buy a--did you deposit the $255,000 check with Mr. LeVien?

A Yes.

Q What did you ask him to do with it?

A I told him I wanted to purchase a CD for 30 days, and he told me--I asked him what the interest was.

He told me the interest was eight-and-three-quarters.

I told him that the prevalent interest was nine.

I made a phone call to another bank at the time to verify this for my own sake.

He said that he could get me interest for 11 percent if I wanted to wait for two or three days and buy Bank of America certificates.

I told him no, I wanted to buy one before the banking day was closed for that particular day.

He said finally, when I finally told him that I demanded the nine percent, otherwise I wouldn't purchase the certificate, he said I could have the nine percent.

He took me across the floor to the teller counter and he gave--he asked me to endorse the check, which I did. He gave me a receipt and he announced to the teller that I was buying a certificate of deposit.

I told him--I asked him at that point when I could have the CD, the papers for the CD itself; he told me it was too late in the banking day to do that, he was doing me a big favor by rushing the money through at this late time because the bank's books were closing but he would put it in the mail to me.

Q Did he give you a receipt for your check?

A Yes, yes.

Q I show you Government's Exhibit 57 (handed).

A That's my receipt.

Q Did you provice that to the Government last week?

A Yes.

Q This is not the CD itself, is it?

A No.

Q What did you do after leaving the bank after receiving this receipt?

A Levien and I left the bank together and we went back to the restaurant.

Q Was John Ebbecke still there?

A Yes.

Q Did you have any discussion with John Ebbecke at that time about what you had just done?

A Yes.

Q What did you tell him?

A I told him that I just bought a CD for $255,000.

Q What did John Ebbecke say?

A I don't recall what he said.

He seemed impressed, but I don't recall what he said.

Q Did you leave Gatsby's?

A Yes.

Q With whom?

A With Joe--to the best of my recollection, I left with Joe Sherry, my partner.

Q Did you receive your certificate of deposit in the mail as promised?

A No.

Q Did you have occasion to see Frank LeVien thereafter?

A Yes.

Q When and where was that?

A I recall that it was on December 16 at the same restaurant when I was there with, again, Joe Sherry, myself, John Ebbecke, two gentlemen from a company that were proposing to me that I invest in their company to gain a tax shelter for myself.

That's all I can recall at the meeting.

Q Who introduced you to these people?

A Mr. Ebbecke.

Q Did you have occasion to see Mr. LeVien at this meeting?

A Yes.

Q Tell us what happened.

A We were sitting in a portion of the restaurant that was constructed mainly of one table along one wall and another table along the other wall, the two tables facing each other, if you will.

THE COURT: Was this in the back of the restaurant?

THE WITNESS: It was in the back of the restaurant, yes. It was in the back right-hand section of the restaurant.

My back was up against the wall and I faced the other table and Mr. LeVien was sitting with his back up against the wall facing me.

We were in the restaurant for about 15 minutes, our group, when that group that LeVien was with rose to leave, and as they rose I rose and left my place and went to the middle of the room and greeted LeVien. I shook his hand. I told him--he acknowledged my greeting and returned

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it.

I told him that I had not received my certificate of deposit in the mail as promised.

He said that it was mailed, but when he went back to the bank he would check on it.

He said--I said--I was concerned at the time that I was going to get the eight-and-three-quarters percent interest and not the nine percent.

So he said, "Don't worry about it. You bought a nine percent Manufacturers Hanover Certificate of Deposit as of the day you gave it to me."

That reassured me and that was the last time I met Frank LeVien.

Q Did you return to the bank or did you call the bank--didyou receive the certificate of deposit in the mail after meeting with Mr. LeVien?

A No.

Q Did you call the bank or go to the bank?

A Yes.

Q Tell us what happened and when, to the best of your recollection.

A I recall that on the 20th of December, I had called the bank and I was looking for LeVien.

I had a special problem at that particular time where

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I wanted to borrow against that particular CD in order to pay my income taxes.

When I bought the CD, I neglected to mention it before, I had an agreement with LeVien that before the CD expired, I could come into the bank and borrow against it.

So, Number one, I was interested in borrowing against the CD and, Number two, I was interested in getting proof of the CD.

So on the 20th, I called the bank and I was told LeVien was on vacation.

Q What did you do when you learned that?

A I asked for--I asked for--can I have a moment to recall the sequence of events here?

Q Sure.

(Pause.)

A Okay.

I recall on the 20th that I wanted to know who was the back-up for LeVien, and I was given two people's names. One, I believe, was Rappel and the other, I believe, was Lyons.

I was told--it seems to me that I recall LeVien was supposed to come back to the bank at any day.

I started calling John Ebbecke to find out who I could speak to at the bank that could honor this obligation or this responsibility of giving me this loan that LeVien had promised me, and I couldn't get in touch with John Ebbecke.

I called his home and I called his office and I spoke to his secretary.

Q How often did you call Mr. Ebbecke during this period?

A Well, I was calling from the 20th until the 26th.

Q How often did you call him?

A Oh, from the 20th to the 30th.

I had called eight to ten times.

Q Did Mr. Ebbecke return your call?

A No.

Q Was this consistent with prior practice? Had he returned your calls in past dealings?

A Yes.

Q Did you go to the bank on December 30, or thereabouts?

A I believe I went to the bank on the 26th. It was the 26th.

Q What happened?

A I was told that LeVien was on vacation and that--there were two other officers there, Lyons and Rappel, and they told me that my certificate was not on file at that bank, it was downtown, and that they could not honor the promise that LeVien had made, I'd have to wait until he got back.

At that point I told him I'll be back on the 30th or January 3rd to pick up my CD; I wasn't going to do business with that bank.

Q Did you return?

A I returned on January 3rd.

Q And did you receive your CD?

A No. At that time I was told that there was no CD on file at the bank and that Frank LeVien was no longer employed by the bank and I was told that I best be advised to get myself an attorney.

Q Did you do so?

A Yes.

Q Did you ultimately receive the payment from the Manufacturers Hanover Trust Company?

A Yes.

Q When did you receive that?

A I don't recall exactly, but I think it was about three months later; two-and-a-half, three months later.

Q What did they pay you?

A They paid me my face value of my CD plus the interest at nine percent for that entire period.

Q After you had learned that Frank LeVien had been discharged and that you, in fact, did not have a CD, did you get a call from John Ebbecke?

A Yes. He called me on January 30.

Q What did he say?

A He told me that--incidentally, if I may say, I was instructed by my attorney at that time not to speak to anybody about anything that was going on.

However, when John called, I told him that I had--the bank had denied knowledge of my having my money on deposit at the bank and that I had to go get an attorney to fight for the money that was mine.

He told me he was very sorry that this had happened to me, that he did not intend to introduce me to the man, he had no knowledge--he would not have introduced me to the man if he knew that he was a crook. He said that he felt the man was a crook.

He said that two other of his friends had got stung, was the phrase that he used. He said that he didn't know that I was stung.

That's about all I can recall of what he said.

Q You mentioned that Mr. Ebbecke introduced you to Howard Garfinkle.

A Yes.

Q How many meetings did Mr. Ebbecke attend with Howard Garfinkle and yourself?

A One. That's all I can remember, one.

Q Did Mr. Ebbecke encourage you to invest in anything--what was the purpose--what did Mr. Ebbecke say was the purpose of his introducing you to Howard Garfinkle?

A Well, to the best of my recollection, was that Garfinkle had an apartment house complex in Georgia or some southern state and he wanted me to invest certain amounts of money, something well in excess of a quarter of a million dollars, into this housing project as a tax shelter.

MR. REILLY: No further questions.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Koch, you told us all in detail about the transaction with the Manufacturers Hanover Bank when you purchased the $255,000 CD or thought you had purchased a CD.

This took place on December 4th, is that correct?

A Yes.

Q We are trying to reconstruct the events of that day.

You cashed in a CD which you had with Marine Midland?

A Yes.

Q On the same day, on the morning of that day, correct?

A Yes.

[illegible] In return for that, you received a check which Mr. [illegible] showed you in the sum of $255,000?

A Yes.

Q With that check in your pocket, you went to a luncheon meeting at Gatsby's?

A Yes.

Q At that meeting, Mr. LeVien was present from the bank, is that correct?

A Yes.

Q Was there anybody else present from the Manufacturers Hanover Bank?

A At that luncheon?

Q Yes.

A No.

Q Did you, at the time of the luncheon, did you ever tell Mr. Ebbecke---

A Can you speak a little louder? I have a little cold and I can't hear too good.

Q When you went to this luncheon, did you tell Mr. Ebbecke that you had this check in your pocket?

A No.

Q At any time prior to the time you gave the check to Mr. LeVien, did you tell Mr. Ebbecke that you had this check?

A No.

Q At any time prior to the time you gave the check to Mr. LeVien, did you tell Mr. Ebbecke you were going to buy this CD from the bank?

A No.

Q Did you ever discuss with Mr. Ebbecke the prospect of purchasing a CD from the Manufacturers Hanover Bank?

A It was Ebbecke's--if that is a yes or no, specifically, no.

Q So then at the time you made this deposit, gave this check to Mr. LeVien, Mr. Ebbecke had no knowledge of the existence of this check or this deposit, is that correct?

A That's correct.

Q When Mr. Ebbecke brought you to the Manufacturers Hanover Bank, was it specifically to meet Mr. LeVien?

A I don't--he never brought me to the bank, sir.

Q He never brought you to the bank?

A No.

Q How did you--

A He brought me to the restaurant where I met the banker.

Q Was it ever his purpose, that you were aware of, to introduce you to anybody at the Manufacturers Hanover Bank?

A Can you say that louder?

Q Were you aware that it may have been his purpose at any time to introduce you to anybody at the Manufacturers Hanover?

A Yes.

Q Was it Mr. LeVien specifically?

A He wanted to introduce me to--he mentioned two names.

Q Two names?

A Two names of people that he wanted to introduce me to at that bank. One was a Mr. LeVien and the other was a Mr.--I believe his name was Eichler.

Q Eichler?

A I believe so, yes.

Q When Mr. Ebbecke telephoned you on January 30 of 1975 and you had a conversation with him with respect to this CD that never existed, was it his--was it your testimony that at that time Mr. Ebbecke had just become aware that this CD did not exist?

A As far as I was concerned, that was the first time--that's the first time that I spoke to him about it or that he expressed ignorance of the whole affair.

Q What, if anything, did he say about LeVien's other problems at the bank?

A The only thing I recall him saying was what I just testified to before.

Shall I repeat that?

Q If you would, I would appreciate it.

A He told me that two other of his friends had gotten stung, one for $40,000 and one for $60,000, and that he did not know that I was stung.

He said he didn't know the man was a crook; if he had known that he was a crook he wouldn't have introduced me to him.

MR. WEINBERG: I have no further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did you have any discussions with John Ebbecke prior to this December 4 meeting about establishing some sort of relationship with the Manufacturers Hanover Trust Company?

A Yes.

Q Tell us what those discussions were. What did John Ebbecke tell you?

A Well, he had asked me if I had any--if I had a bank.

He knew that I had received or was about to receive this money. And I told him I had no relationships with any banks because when I was severing the relationships with my company I was severing my relationships with my company's bank as a matter of personal desire on my part.

He said that he had a very good--or he had very good connections down at the Manufacturers Hanover Bank and he told me that there were managers or vice presidents, I don't recall which, of the bank that were very worthwhile meeting, they were very powerful in banking circles and it would behoove me financially to meet these bankers and he would introduce them to me.

Q And this was the Manufacturers Hanover Trust Company?

A Yes.

Q You stated in response to Mr. Weinberg that the answer to his question, specific question, whether you had discussed with Mr. Ebbecke about purchasing a CD with the Manufacturers Hanover Trust Company was specifically no, is that correct?

A Yes, right.

Q Generally, was there a discussion about investing or depositing money with the Manufacturers Hanover Trust Company?

A Generally, he advised me that it would be good to meet these people at the bank and establish a banking relationship.

That was the general context of it.

Q Immediately after depositing the $255,000 with Frank LeVien, did you return to Gatsby's?

A Yes.

Well, 20 minutes later.

Q And when you returned, did you tell John Ebbecke at that time that you had just purchased a CD for $255,000?

A Yes.

MR. REILLY: No further questions.

RECROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Koch, when discussing with Mr. Ebbecke the possible banking relationship with the Manufacturers Hanover Trust Company, Mr. Ebbecke talked in terms of officers, plural?

A I missed that word. What?

Q Mr. Ebbecke talked in terms of officers?

A Officers, yes.

Q Plural, is that correct?

A Plural, right.

MR. WEINBERG: I have no further questions.

MR. REILLY: No further questions, your Honor.

THE COURT: Thank you, Mr. Koch.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. REILLY: Your Honor, the next witness is a very short witness named Annette Giudice.

THE COURT: I think after we finish with Annette Giudice we will take our mid-morning break.

ANNETTE GIUDICE, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Miss Giudice, did you ever work for a person by the name of John Ebbecke?

A Yes, I did.

Q When was that?

A April 8, 1974.

Q April 8, 1974? Was that the last time you worked for him or is that when you started?

A No, no, that's when I started.

Q And are you still working for him?

A No.

Q When did you stop?

A September 10th, 1976.

Q In what capacity did you work for Mr. Ebbecke?

A Secretary.

Q Are you familiar with the name Gramercy Capital, Ltd.?

A Yes.

Q What was that?

A That was Mr. Ebbecke's company.

Q Were you listed as an officer on the bank depository cards, bank registration cards?

A Yes.

Q Did you have authority to sign checks for Gramercy Capital, Ltd.?

A Yes.

Q Did you have authority to endorse checks and deposit them into the account?

A Yes.

Q Mr. Ebbecke gave you that authority?

A Yes, he did.

Q Did you participate in any of the business decisions of the Gramercy Capital, Ltd.?

A No, I did not.

Q And when you wrote a check for Gramercy Capital, Ltd., would that be pursuant to instructions or would you have the authority to initiate making such a check?

A Well, both. I would have--I would tell Mr. Ebbecke if I had to pay a bill, I would do it on my own, if it was just a bill for the office.

Q Did there ever come times when Mr. Ebbecke told you to write a check out to so-and-so and you would do it?

A Yes.

Q Where did Gramercy Capital--did Gramercy Capital, Ltd. maintain a checking account at Manufacturers Hanover Trust Company?

A Yes.

Q Do you know where the branch is located?

A In Mineola.

Q I am going to show you a series of exhibits.

I will first show you Exhibit No. 42 (handed).

Can you state whether or not the writing "$75,000" on that check is in your handwriting?

A Yes, it is.

Q I am now going to show you a photocopy of a check, Government's Exhibit No. 43.

I am directing your attention to the third check on the page. Will you look at that carefully--I know the light is not good--but can you tell us whether you recognize the handwriting on that check?

THE COURT: Here, let me give you a little more light.

THE WITNESS: It is very faded.

THE COURT: That is why I am going to give you a little more light.

A It looks like my writing.

Q Is there a signature on the check?

A Yes.

Q Whose signature is that?

A It looks like my signature. It's so faded. Yes.

Q Is that a check--that is a check for what amount?

A $68,000, it looks like.

Q Made out to what account?

A Ficarra Furniture of Queens.

Q Do you have any independent recollection of writing that check?

A I'm just trying to look.

No, but--I don't, really. I don't even remember--

Q Under what circumstances was that check written, then?

A I don't remember it, really.

Q Do you have any recollection--if you wrote a check of this magnitude, would this have been pursuant to the direction of Mr. Ebbecke?

A I'm sorry, I didn't hear the first part.

Q If you wrote a check of this magnitude--

THE COURT: This size, $68,000.

Q --of this size, $68,000, would that have been pursuant to the direction of Mr. Ebbecke or somebody else?

A Yes, I would have to get direction from Mr. Ebbecke or someone else.

Q I am showing you Exhibit No. 61, which is a deposit slip dated December 9, 1974 already in evidence in the amount of $15,000 (handed).

Can you state whether or not that is in your handwriting?

A Yes, it is.

Q Now I am going to show you Exhibit 60, which is a check appearing to be signed by William J. Kitson, addressed to Gramercy Capital for $15,000 (handed).

Do you recognize any of your own writing on that check?

A Yes. I wrote--I filled in "Gramercy Capital" and the amount for $15,000.

Q And did you also write out the words "Five thousand dollars and no cents"?

A Yes.

Q Again, do you have any recollection, independent recollection, concerning the making out of that check?

A I recall that--you mean where I got this check from?

Q Yes. Where did you get that check from, if you can remember?

A I recall that John Duncan had given it to me.

Q Who is John Duncan?

A Mr. Ebbecke's driver at the time.

Q And when Mr. Duncan gave you that check, what did you do? Was it--

A Mr. Duncan asked me to fill it out for $15,000. He didn't tell me who--who told me to, he just says, "Here's a check, fill it out for $15,000 and deposit it in the Gramercy account."

Q Was Mr. Duncan employed by Gramercy Capital?

A Yes.

Q And to your knowledge, what did Mr. Duncan do at Gramercy Capital, Ltd.?

A He was a driver or a chauffeur, either way, whatever.

Q Is that it?

A He was a chauffeur, yes.

Q For whom?

A For Mr. Ebbecke.

Q Did he pick him up in the morning every day?

A Yes.

Q Did he drive him all around New York City and the area?

A Yes.

Q Did he take him home at night?

A Yes.

Q On the reverse side of the exhibit before you, the check, is there an endorsement?

A "For deposit," you mean?

Q Yes.

A Yes.

Q Was that deposited into the Gramercy Capital checking account?

A Yes.

Q And who wrote the endorsement?

A I did.

MR. REILLY: No further questions.

That is all I have.

THE COURT: Mr. Weinberg?

MR. WEINBERG: I have no questions for this witness.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, we will take our morning recess at this time of ten minutes

Please, do not discuss the case among yourselves. Keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

(Recess.)

(In open court, jury absent.)

FRANK LETTIERI, called as a witness by the Goverenment, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Lettieri--

THE COURT: Just a minute.

I would like the record to reflect in addition to Mr. Lettieri being present in the courtroom another gentleman is here standing nearby.

I would just like him to identify himself for the record.

MR. MOKOTOFF: Yes. I am Mr. Lettieri's attorney. My name is Harold S. Mokotoff, Mokotoff & Katz is the firm name, and my address is Two Pennsylvania Plaza. New York.

THE COURT: Thank you, sir.

You may proceed, Mr. Reilly.

Q Mr. Lettieri, have you been subpoenaed to testify here today?

A Yes.

Q I am going to ask you some questions today about your relationships with John Ebbecke.

Will you answer those questions?

A Yes.

MR. MOKOTOFF: No.

If your Honor please, may I at this point intercede and advise the court that an order granting immunity was entered by this court by Mr. Justice MacMahon-- I am looking for the date of the order.

THE COURT: January 13, 1977.

MR. MOKOTOFF: And that order will become effective if Mr. Lettieri should refuse to testify on Constitutional grounds.

THE COURT: I think what should be done is for Mr. Reilly to ask Mr. Lettieri certain questions and Mr. Lettieri may, if he wishes, in response to those questions, refuse to answer them and assert his Constitutional privilege, and then the record will be clear.

MR. MOKOTOFF: If your Honor please, if I may respectfully suggest for the purpose of saving time that I state on behalf of Mr. Lettieri that he will refuse to answer any questions on the ground of Constitutional privilege that may be put to him, so that I think we may take a general position that he will answer those questions and then have the court make its ruling.

THE COURT: Mr. Lettieri, you have just heard your counsel speak, have you not?

THE WITNESS: Yes.

THE COURT: Do you adopt the statements which have been made by your attorney?

THE WITNESS: Yes.

THE COURT: Mr. Reilly?

MR. REILLY: Your Honor, I seek that you advise the witness that this order has been signed and he will be held in contempt for failure to answer any questions now, that an immunity has been granted.

THE COURT: By the last statement of counsel and by the adoption of that statement by Mr. Lettieri, the court finds that the witness has expressed a refusal to answer any questions which might be asked in connection with this case on the basis of asserting his privilege against self-incrimination.

The privilege having been asserted, the court turns to an order which has been handed up which has been signed by the Honorable Lloyd F. MacMahon on January 13, 1977, which confers immunity upon Mr. Lettieri pursuant to the authority vested in the Assistant Attorney General in charge of the Criminal Division of the Department of Justice, that authority being vested in the Assistant Attorney General by 18 United States Code, Section 6003.

Mr. Lettieri, I direct that you answer all further questions put to you by Mr. Reilly, and I advise you that you will be doing so under an order granting you immunity from prosecution in the event any of the answers that you give are incriminating.

The only immunity which you will not have is immunity from a prosecution for perjury if you lie or a prosecution for contempt if you refuse to answer any questions put to you by Mr. Reilly.

Aside from being accountable for perjury and contempt, you will receive immunity with respect to all truthful answers which you give to the questions put by both Mr. Reilly on direct examination and by Mr. Weinberg on cross examination.

Therefore, I direct you to answer all questions put to you by both counsel.

Do you understand, sir?

THE WITNESS: Yes.

THE COURT: All right.

MR. MOKOTOFF: On behalf of my client, Mr. Lettieri, I wish to advise the court that he will, under those circumstances, answer all questions put by Mr. Reilly.

MR. REILLY: I am sure Mr. Mokotoff understands this, but this is a use immunity as opposed to transitional immunity.

THE COURT: Yes.

Let me make that very clear.

That is, the answers which are given cannnt be used in any subsequent prosecution or proceeding. He does not receive a blanket immunity, so-called transitional immunity, should the Government be able to make out a case against him from sources independent of his own testimony.

Do you understand that, Mr. Mokotoff?

MR. MOKOTOFF: I understand that, your Honor.

THE COURT: Very well.

With that understanding, you have instructed your client to respond here to the questions put by both counsel, is that correct?

MR. MOKOTOFF: That is correct.

MR. REILLY: Thank you, your Honor.

THE COURT: Very well.

Is there anything further before we take a short recess?

MR. REILLY: Not with Mr. Lettieri.

THE COURT: Thank you.

You may step down briefly, sir.

(Witness temporarily excused.)

(Recess.)

(In open court, jury present.)

THE COURT: Mr. Reilly, would you call your next witness, please.

MR. REILLY: The Government calls Mr. Gerson Fabe, who is already present on the witness stand.

(Continued on page 231.)

GERSON FABE, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Fabe, what is your business?

A I am a life insurance agent.

Q For what company?

A Connecticut Mutual Life Insurance Company.

Q And were you so engaged in 1974?

A Yes.

Q During 1974, did you know an individual by the name of John M. Ebbecke?

A Yes.

Q Likewise, during that period, did you know an individual by the name of Frank W. LeVien?

A Yes.

Q Did there come a time when John Ebbecke asked you to assist him in obtaining a loan?

A Yes.

Q Tell us what happened, what he said.

A I was to--

THE COURT: First can you tell us about when that took plade?

THE WITNESS: Approximately middle of 1973, perhaps June or July.

THE COURT: 1973 or 1974?

THE WITNESS: 1973.

THE COURT: Very well.

A A meeting was held in the office of my attorney, which Mr. Ebbecke and Mr. LeVien were present, and a loan was negotiated, an installment loan with the Manufacturers Hanover Trust Company, for $10,000, upon which I was a maker and on which Mr. Ebbecke was the co-maker.

A document was prepared by the attorney to give me some security on this particular loan, part of which was a loan on three boats which Mr. Ebbecke owned.

The original terms of the loan were to have been repaid in 30 days, but it didn't work out like that. Monthly payments were to be made, Mr. Ebbecke was to make them, and some were made.

There came a time in 1973 when the loan was very heavily in arrears.

At the time that the loan was negotiated, Mr. LeVien had agreed to guarantee any amount of default up to $4,000, and he gave me a note to that effect, and when the loan was in arrears, I called upon Mr. LeVien to make good on his note, and he did by giving me a check for, I think,

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$3,150.

Q To the best of your recollection, when did that take place?

CN

A Approximately August or September of 1974.

Q I am going to show you Government's Exhibit No. 62, and ask you to examine that exhibit first (handed). Is that the check which Mr. LeVien gave you?

A I think it is.

Q And what is the date on it?

A December of 1974.

Q Is that the same check in connection with the same loan that you referred to in your testimony?

A This is the check.

Q Am I right to assume that it was not August but it was December?

A Yes, that's correct.

Q Did you have any conversation with Frank LeVien when you got that check?

A Only to the effect that the loan was overdue and I couldn't pay it and that I was calling upon him to make good on his note and his promise.

Q Prior to receiving that check from Mr. LeVien and prior to discussing that with Mr. LeVien, did you have any conversations around that time with John Ebbecke about paying the loan?

A I had had quite a few conversations by telephone and I had occasion to write him some letters telling him that the account was in arrears and that I was under substantial pressure from the collection division of the bank to pay the--pay whatever was due on the loan.

Q And after you received this check from Frank LeVien, what did you do with it?

A I deposited it to an account, the Long Island Bank and Trust Company and drew a similar check against it which I then gave to the Manufacturers Hanover Bank.

Q Did that close out the loan?

A No. There was still a matter of some interest due, some 362-odd dollars which ultimately I had to pay.

Q Did you have any conversations with Mr. Ebbecke after you received that check from Frank LeVien?

A Immediately following?

Q Yes, at or about that time.

A No, none other than continuing to get him to repay.

Q Did you ever tell Mr. Ebbecke that you had received this check or a payment from Frank LeVien?

A Subsequent, in the following year, when I was still trying to collect the $362, I mentioned that I had received this check from Mr. LeVien.

Q And what did he say?

A He tol. e at that time that that was only a small part of what LeVien owed him, that LeVien owed him maybe $15,000.

Q Have you been paid back for the interest that you paid on that note?

A No.

Q How much interest did you pay?

A About $362 and some pennies.

Q Who did you seek the interest payment from?

A I sought it from Mr. Ebbecke.

Q And has he paid it?

A No, he hasn't.

MR. REILLY: No further questions.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Fabe, when you received this check from Mr. LeVien, you called upon him as a guarantor of this note to pay his obligation, is that correct?

A Yes.

Q Did you have any knowledge of where these funds may or actually did come from when you received the check or prior to receiving the check?

A No.

Q Did you speak to Mr. Ebbecke about this check prior to your receipt of it?

A No.

MR. WEINBERG: I have no further questions.

MR. REILLY: No further questions.

THE COURT: You are excused, sir. Thank you very much.

(Witness excused.)

THE COURT: Would you call your next witness, please.

MR. REILLY: Yes.

The Government calls Mr. Frank Lettieri.

THE COURT: Frank Lettieri, please.

FRANK LETTIERI, called as a witness by the Government, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Lettieri, what is your line of business?

A Furniture manufacturer.

Q And were you in the furniture manufacturing business in 1974?

A Yes.

Q What were the names of your companies or company that you operated at that time?

A Cellini Furniture Corp.

Q In 1974, was Cellini Furniture Company in financial difficulties?

A Yes.

Q Did you have occasion to meet an individual by the name of John M. Ebbecke?

A Yes.

Q Where and how did you meet Mr. Ebbecke?

A Well, I went to see a furniture dealer one morning and I went there to collect money and the gentleman told me--it was Ficarra Furniture, Mr. Leone.

The gentleman told me he could have got me a loan, an SBA loan, that he had somebody in his **store** waiting for him to talk to him, that he was going to introduce me to him for a loan, for an SBA loan.

Q Do you recall when you met Mr. Ebbecke, about what time of the year?

A I would say it was sometime around March. I'm not positive, you know.

Q Was that in 1974?

A To the best of my knowledge.

Q 1974?

A Yes.

Q Did you have any financial dealings or discussions with John Ebbecke?

A Yes. Mr. Leone introduced me to Mr. Ebbecke and Mr. Ebbecke asked me a few questions about the company and I told him that I was operating a company in Florida, also.

He told me to get my statements together, whatever paper, whatever the necessary paper, are that he would put through for an SBA loan.

Q And did there come a time when you went to the Manufacturers Hanover Trust Company?

A No, not at that time.

When I discussed with Mr. Ebbecke this, he told me to go over his office one day and that--and bring over whatever papers is necessary, and I put him in contact, also, with my attorney--with my accountant.

I went over to his office with whatever paper I had, I gave it to Mr. Ebbecke.

He told me he wanted $1,500 retainer, and he said he was going to put through, he had a few people that he could put through for a loan, he had a few friends that he could put through for a loan, for an SBA loan and one bank sticks in my mind was the Vanguard Bank in Long Island.

THE COURT: I am sorry, what was the name of that bank?

THE WITNESS: The Vanguard Bank.

THE COURT: The Vanguard Bank?

THE WITNESS: Yes.

THE COURT: Thank you.

Q Did you pay him a $1,500 fee?

A I give him a check, yes, sir.

Q In that amount?

A $1,500, and it was six percent, then he give me a letter with it that it would be six percent, his commission, when he would get me the loan, the SBA loan.

Q This is the SBA loan?

A Yes.

Q And for what amount of financing were you seeking under the SBA loan?

A I believe it was $385,000, was the maximum then.

Q And this financing was with the Vanguard Bank, you say?

A It was supposed to be with the Vanguard Bank then.

Q Did there come a time when you were introduced to an individual bank officer at the Manufacturers Hanover Trust Company?

A Yes. On a later date, a lot of time went by and he couldn't get the loan yet and he told me that the guy from Vanguard Bank wasn't there, he couldn't get ahold of the guy or he was on vacation, whatever it was, he couldn't get me the loan and he said that he was going to try to get me through a friend of his that is over at Manufacturers Hanover Bank, he was going to try to put the paper through him and to get me SBA through Manufacturers Hanover.

Q Did there come a time when you met this individual, somebody at the Manufacturers Hanover Trust Company?

A Yes.

Q Whom did you meet?

A Before I went down to thebank I was over there at the office and a gentleman, a friend of Mr. Ebbecke, came in, Judd Finerman, and Mr. Ebbecke asked Judd Finerman if he would do him a favor to drive me over to the Manufacturers Hanover and introduce me to Mr. LeVien at the bank.

Q And did he do so?

A Yes, sir.

Q Did you meet Mr. LeVien?

A Yes, sir.

Q And did you have any discussions with Mr. LeVien about obtaining a bank loan?

A Yes, I did.

All I did, I went under Mr. Ebbecke instruction that Mr. LeVien knew all about the loan, all I had to do, just go there and he was going to give me a temporary loan at that moment, that he couldn't--he couldn't give me the loan, he couldn't approve the SBA, he had to wait, it takes about six to eight weeks, that he will give me a temporary loan for that time.

Q And did you obtain a loan when you went to see Mr. LeVien?

A Yes, sir.

Q For about how much?

A $30,000.

Q And can you recall when that was?

A It was sometime in the summer. It was the end of June or July. I don't remember.

I believe it was sometime in July.

Q I am going to show you Government's Exhibit 5 in evidence, and I will ask you--

A I don't have my glasses.

Q You do not have your glasses?

I am going to show you this--I am going to read this exhibit to you and ask you whether my reading of it refreshes your recollection.

The top part--excuse me, the middle part indicates a note of $30,000 July 8, 1974 for $60, signed by Cellini Furniture Company.

Does that refresh your recollection--

A Yes.

Q --my reading of that, as to when you went to see Mr. LeVien?

A It was in July. That was the time. That was the first time I met Mr. LeVien, when he gave me the $30,000.

Q And shortly thereafter, did you obtain any further loans from Mr. LeVien?

A Yes.

Then there were couple of weeks went by. I had called John Ebbecke, John Ebbecke office, and I ask him what was doing with the loan, and I told him that I was tight for money.

I said what he was doing, if he could speed it up.

And he said to me, he said, he will come up, "Maybe I'll call Mr. LeVien. Maybe I can get you additional money until the loan comes through."

Q Therefore, this additional money you were seeking--

A I called him from Florida.

Q This additional money was not the SBA loan for which--

A No, no.

Q Did you obtain a loan, a subsequent loan from Mr. LeVien?

A Yes, I did.

Q And--

A It was $25,000 the second time that he give me a loan.

Q At this time, did Mr. Ebbecke, in July of 1974, ask you to lend him $10,000?

A No.

The second time I got a loan there were a few checks that bounced in the bank and I couldn't understand why these checks bounce.

So I call Mr. LeVien and I asked Mr. LeVien, "Why are these checks bouncing?" I said, "You just put in money."

He said, "Well, I had to take out $10,000 for Mr. Ebbecke." He said, "I had to give it to Judd, that Ebbecke owe it to Judd Finerman."

I tell him, "How can you take $10,000 without telling me?" I says, "I made checks against those."

He said, "Well, don't worry about, you speak to John."

He says, "We'll straighten it out." He said, "I'm sure the account--" he said, "Make the check, I'll make sure it doesn't bounce."

So I call Mr. Ebbecke up and ask him about, and Mr. Ebbecke call--

THE COURT: What, if anything, did Mr. Ebbecke say when you asked him about this?

THE WITNESS: He said that he was going to call Frank LeVien and talk to Frank LeVien not to bounce any of my checks.

Q Did he state--what did he say, if anything, about the fact that Frank LeVien had taken $10,000 from your account and issued a check on behalf of Mr. Ebbecke to Judd Finerman?

A At that time he said, "Yes, Frank, I took it." He said, "I meant to tell you. I took it." He says, "We can always take it off the fee on the end, when the loan comes through, we take it off the top."

Q What did you say?

A I had no choice. I had no--

THE COURT: No. What did you say?

THE WITNESS: I said, "Okay, John." I said, "If you going to--" if they weren't going to bounce any checks on me, I said, "All right."

Q Did John Ebbecke ever obtain for you the SBA financing that you had sought through him?

A No.

Q Did he ever obtain any other financing for you in the amount of $385 or--what was the financing you were looking for?

A It was supposed to be $335,000.

Q Did he obtain that $385,000 for you from any other banking source?

A No.

Q Did John Ebbecke ever pay you back the $10,000 that he had taken or that had been given to him from your account?

A No, no.

Q Have you become legally obligated to pay John Ebbecke that $10,000 at any time since July of 1974?

A No.

Q Directing your attention to September of 1974, did you have occasion to go to Ficarra Furniture Company and attend a meeting with John Ebbecke and others?

A Yes.

I had made several checks that I know I had deposits in the bank and my checks, they were bouncing.

So I called Frank LeVien directly myself to ask

Frank LeVien why are my check bouncing, and Frank LeVien said to me, "You better call John. Get together. We better have a meeting."

So I said to him, I said, "But what is it all about? I just made checks out and I have creditors screaming."

He said, "Well, you come up here."

I was in Florida.

He said, "You better come up here, we have a meeting. We can straighten the whole thing out."

I called John Ebbecke up, and John Ebbecke said to me--and I told John Ebbecke what LeVien told me.

So John Ebbecke said, "I'm going to call that guy up," meaning Mr. LeVien. He said, "I'll call him up and I'll talk to him and I'll see what it's all about, why is he bouncing your checks. Maybe you don't have to come."

Mr. Ebbecke called me back after speaking to LeVien and he told me to come up to New York and as soon as I come up to call him up.

When I came up to New York, I called Mr. Ebbecke up, and we met--Mr. Ebbecke told me to meet at Gatsby's Restaurant.

We met at Gatsby's Restaurant, and Frank LeVien was there and I and Mr. Ebbecke.

THE COURT: Who else?

THE WITNESS: Mr. Ebbecke.

THE COURT: Anybody else?

THE WITNESS: No. Frank LeVien, Mr. Ebbecke. Jack Kitson also was there.

A They informed me that Frank--Frank LeVien told me this, that they made, they arranged a meeting for the afternoon, they were trying to get Frank Leone to come over to Gatsby's Restaurant, he couldn't make it, that we should go to his office.

So from there we all four, we went to Mr. Leone's office.

We got to Mr. Leone's office--

Q About what time of day was that?

A It was late afternoon. I believe it was about five, six o'clock, something like that. It was late afternoon.

Q Who was present then at the office?

A Mr. Leone, Mr. Ebbecke, myself, Frank LeVien and Jack Kitson.

Q Tell us what happened.

Q The conversation opened that Frank--John Ebbecke said to Frank LeVien, he said, "Tell us what happened, Frank."

He said, "About the checks, what is the story with

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the checks bouncing?"

He says, "These guys keep calling me. You put me under pressure."

Frank Leone then got up and screamed and he said, "I don't care what you guys do, you better don't bounce my checks."

So Frank LeVien said, "I just took $25,000 out of your account and I put it into Frank Lettieri's account, Cellini Furniture."

Then Frank Leone said, "I don't care what you do as long as you don't bounce my checks."

So John Ebbecke said to Frank LeVien, he said, "I'll tell you what you do." He said, "Take $25,000 out of Jack Kitson's account," he said, "and cover Frank Leone account, this way you don't bounce his checks."

At the end of the meeting nothing came out, this was the end of the meeting, there was nothing else doing.

Q Did there come a time when you received the original of these three notes marked as Exhibit 5 in the amounts of $30,000, $25,000 and $52,000 marked "Paid"? (Handing.)

A Yes.

Q And were you advised that they had been paid?

A Yes.

Q Who told you that?

A John Ebbecke told me about the notes being paid, that he cleared my account.

Q And had you taken any action to pay off those notes? Was it your money that was used specifically to pay off those notes on that date?

A We really don't know because we never got statements up to a certain point. We never got statements from the bank. We made several deposits and we didn't know what was going on because there was money taken in and out from the account.

Q This document says that these notes are marked "Paid" on October 15, 1974, each of the three notes.

Did you go to the bank on October 15, 1974--

A No.

Q --and pay $107,000?

A No.

Q And you state John Ebbecke advised you that Frank LeVien paid up those notes?

A Cleared up the note.

Q Prior to testifying here in the presence of the jury, did Judge Ward direct--did you invoke the Fifth Amendment and refuse to testify?

A Yes.

Q And did Judge Ward order you to testify pursuant to a grant of use immunity?

A Yes.

Q And did your lawyer accompany you today?

A Yes.

Q And did he advise you to take the Fifth Amendment?

A Yes.

MR. REILLY: No further questions.

THE COURT: You may inquire, Mr. Weinberg.

MR. WEINBERG: Thank you, your Honor.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Lettieri, you testified that at that meeting held at Ficarra Furniture, Mr. Ebbecke told Mr. LeVien to take $25,000 from Mr. Kitson's account to cover Mr. Leone's checks? Was that your testimony?

A Yes.

Q Mr. Kitson was there at that meeting, wasn't he?

A Yes.

Q What, if anything, did he say about that?

A Mr. Kitson didn't say anything.

Q He said nothing. He did hear that instruction?

A Yes.

Q Mr. Lettieri, didn't you lend Mr. LeVien sums of money personally?

A Never lend him money.

Q Didn't you instruct him that he could authorize--

A Didn't instruct him.

Q --to make debits on your account for his personal use to buy his own house?

A I did not instruct him. They just took it out. Mr. LeVien just took it out. He took it out of my account.

Q You said Mr. LeVien did this on his own?

A And Mr. Ebbecke knew all about it.

Q I am sorry?

A Mr. LeVien took it out of my account.

THE COURT: And what else did you just say?

THE WITNESS: Mr. Ebbecke knew all about it.

MR. WEINBERG: I am going to move to strike it as not responsive.

THE COURT: Strike it.
The jury will disregard that.
It is not responsive to the last question.

MR. WEINBERG: I have no further questions.

(Continued on page 252.)

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did there come a time when you learned that Mr. LeVien had taken money out of your account to pay for his house?

A Yes.

Q How did you learn that?

A We had--we, in Gatsby's one night.

Q Who was there?

A It was me, Mr. Ebbecke and Frank LeVien.

Frank LeVien said that he needed $12,500 very bad, and Mr. Ebbecke said, "When do you need it for?"

So he said, "In the next couple of weeks. I'm going into contract for my house."

He says, "So you got time yet."

At a later date--

Q Can you first of all tell us, generally, when that conversation took place? Do you know the month?

A It was sometime towards the end of July, the middle of July. It was sometime in July. I don't remember the exact time.

Q All right.

Go ahead. You had another conversation.

A Then I had another conversation with Mr. LeVien

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by my checks bouncing and I receive in the mail a draft, copy of a check of $12,500, I receive, and I ask him what was that all about.

Then I called Mr. Ebbecke and I asked Mr. Ebbecke what was it all about.

Mr. Ebbecke told me that Frank LeVien needed for his house.

He said, "Don't worry about, he's not going to bounce your check or he will cover your account."

MR. REILLY: No further questions.

RECROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Lettieri, when was this that you learned, when you first learned that Mr. LeVien had taken $12,500 from your account?

A I receive a copy from--one of these white slips from the bank.

Q Was that in August or September of 1974?

A No. I think it was in July or sometime the end of July, the beginning of August, something like that.

I don't remember the date. I don't remember the correct date.

Q And you did not report that to any authorities, then, did you?

A No.

Q You did not go to the district attorney?

A No.

Q You did not go to the United States Attorney?

A No.

Q You did not go to any higher officer at the bank, did you?

A No.

Q You were content to let that situation exist?

A I didn't go anyplace because they told me that they were going to cover the check.

MR. WEINBERG: I have no further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did John Ebbecke tell you they were going to cover the check?

A They were going to cover the check, yes.

MR. REILLY: Thank you.

MR. WEINBERG: No further questions.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

MR. REILLY: The Government's next witness is William Kitson.

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WILLIAM KITSON, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Kitson, are you known by any other name than William?

A Commonly called Jack.

Q Where do you reside, Mr. Kitson?

A 30 Little Neck Road, South Hampton.

Q Were you once associated with an enterprise by the name of Alpha Scaffolding and Equipment Company?

A Yes, I was president.

Q From what period of time?

A That would be from '68 to '74, I would think.

Q And during the period that you were at Alpha Scaffolding and Equipment Corporation, did you come to know an individual by the name of John Ebbecke?

A Yes.

Q When was that, to the best of your recollection?

A I would think the early part of '74.

Q Tell us the circumstances of how you came to meet Mr. Kitson.

A Mr. Ebbecke, you mean?

Q Yes, Mr. Ebbecke.

A Okay.

Well, we had a very fine company of its type, but we did lack capitalization in order to expand to take advantage of the market, so a friend of mine, **Judge Lerner** introduced me to a Mr. Lou Neidenberg, who was a bigshot with Connecticut Mutual which had its bank account at Manufacturers Hanover Trust where Mr. LeVien was, and as a result of that Mr. Neidenberg took me and introduced me to Frank, the purpose being to obtain financing.

He also, incidentally, took me to another bank at the same time.

We had this sort of go-around. Nothing much came of it. All that was said was, "Well, if your cash flow is adequate, we are not realy too concerned with anything else. If it is adequate to meet the payments, we will grant a loan at some time or other."

I heard statements lik that before, so in the meantime I'm plotting along someplace else.

Eventually I did hear from Mr. LeVien, and I went to the bank and was told that a loan probably would be granted with two provisos:

Number one, that our insurance would have to be taken from our present carrier, which incidentally was down from

Lou Neidenberg, which would have been a heck of a thing, and given to Rabbi Judd somebody or other, his broker, and the other one was we would have to be looked at by their financial consultant, which was Mr. John Ebbecke.

So I went to his office at Mineola, which was very impressive, and he went over our financial statement, made suggests, changes and so forth, primarily changing from short-term indebtedness, which our accountant had shown us as a short-term thing which in actuality was a long-term commitment, and so--then I took it to or it was taken to or sent to, I suppose is the right word, to Frank LeVien, and sometime later I got a call if I went down to the bank and signed this that everything would be under control, which I did.

Q Who called you?

A I think Frank LeVien called. I think so. I wouldn't be sure of that, though, because this goes back some time. But I think so.

Q Did you go down to obtain a loan?

A Excuse me?

Q Did you go to the Manufacturers Hanover Trust Company to obtain a loan after that?

A Yes, yes, I did.

Q How much were you loaned?

A I was asking for more than I got, but he loaned me $70,000.

And at that time he took me to Mr. Lyons, the president, and said, "We want to loan Mr. Kitson $70,000, and if we don't, the Connecticut Mutual will," which was partially true because Lou Neidenberg would have gotten financing elsewhere if it did not go through, so eventually it was $70,000.

Q Did you open a checking account at the Manufacturers Hanover Trust Company?

A Well, he gave me some blank checks, yes, yes.

Q And did you draw any checks upon that account?

A After we got the official notification through the mail that the $70,000 had been credited to our account, we did, because I did need--it wasn't for the original intent, really, but we needed some tax money, so we issued checks for about, oh, I would say roughly $20,000 for tax purposes, and they bounced.

We had two or three back, which sort of really threw me for a loop, because of all places you don't want something like that to happen.

I called up Frank and he said, "Well, it's the computer."

Being an anti-computer man I accepted that, "It will be taken care of," and it was.

Anytime there was a problem, it definitely was taken care of.

Q Did there come a time when you went to a place called Ficarra Furniture?

A Yes. I do remember going there, I think perhaps twice, come to think of it. Yes, I do remember that.

Q Do you remember going out there for a meeting with John Ebbecke and some others?

A Well, not a meeting as such.

I think, thinking for a minute, about four or five were there or went there. I think it was from the bank itself or from Gatsby's or something or other, that way round.

Whether Mr.--I have forgotten his name for a minute--Mr. Ficarra was at Gatsby's or the bank, I don't know, but we did end up there.

Q Who was there when you got there or who was present after you go there?

A Well, there were quite a few.

There were a couple of salesmen, I remember, and I think they gave us a cup of coffee, and there was Mr. Ficarra--

Q Is the name Frank Leone familiar to you?

A Excuse me, it is Mr. Leone. Ficarra is the name of the company. It is Mr. Leone, that's correct.

Q Who else?

A John Ebbecke, I think John Duncan, Frank LeVien.

We went into the **back** office and then it was broken up. I know I was walking around, because my wife at that time was hoping to spend money on Spanish furniture. It was a grand place for that, it was terrific, and I had a look around, and I think it was action at the time--I think there was action. People were coming in and out, customers.

Q Was John Ebbecke present?

A Yes, yes.

Q Was Frank Lettieri present?

A That I don't know.

If he were, I would say he didn't go with us, because the car isn't that big, come to think of it.

I had an idea somebody else was there, but I'm not sure about that, either. A Mr. Phil Schwartz of United Fruit or something, I thought he was there.

Q Mr. Kitson, what do you remember being said at that meeting, if anything?

A Well, really nothing, because--at least that concerned me that I was interested in. I was roaming around with the furniture, so I just had a cup of coffee and that was about it.

Q Do you have any recollection of anybody saying that they were going to take $25,000 out of your account?

A No, because I'd have to be an idiot to permit that.

In fact, the paper I have with me, for what it's worth, and I don't understand--

THE COURT: I think the question has been answered.

Could we have the next question, please?

MR. REILLY: Yes, your Honor.

Q Did you ever tell Frank LeVien or John Ebbecke that your account could be used as either party wished?

A Absolutely not.

Q Did you issue checks on the Alpha account?

A Yes, a few. Yes, yes.

Q Were you a co-signer on the--individually, were you a co-signer on the Alpha note for $70,000?

A Yes, I signed it, yes.

Q Personally?

A Personally.

Q Did any other officer of the company sign personally?

A No, no.

Q Did you advise any other officer of the company that you had taken this loan out?

A Oh, yes, because that was my duty, to get financing for the company.

Q Did there come a time when you met an individual by the name of Karl Koch?

A Yes.

Q Who introduced you to Karl Koch?

A Well, I think Mr. Ebbecke and I were in a restaurant not too far from where we both live and Mr. Koch came in and I was introduced to Karl Koch.

Q And at that time was Alpha Scaffolding looking for further investing?

THE COURT: Who introduced you to Mr. Koch?

THE WITNESS: John, John Ebbecke. John Ebbecke. Excuse me.

Q At that time, was Alpha Scaffolding looking for further investment?

A Well, we certainly were looking for capitalization. I don't know whether we wanted anybody else to come in, but we were looking for capitalization.

Q I am going to show you an exhibit marked

Government's Exhibit 60 for identification (handing).

That is a check made out to Gramercy Capital, Ltd. for $15,000?

A Yes.

Q First of all, is that your handwriting with respect to the signature?

A Yes, it is, definitely.

Q With respect to the payment, the figure $68,000 and the words "Gramercy Capital, Ltd," is that your handwriting?

A No. I think--$15,000, you mean?

Q Yes.

THE COURT: You said "$68,000."

This check, as I recall the description before, was for $15,000.

MR. REILLY: My mistake, your Honor, yes.

A No, that's not my writing.

Q That is not your writing?

A No.

Q Did you advise John Ebbecke that he could write out a check for $15,000 on or about December 6, 1974?

A No, no.

Q At the time, had you paid any money to John Ebbecke for his service in connection with various financial transactions?

A I would think about $6,000.

Q And did you owe anything to John Ebbecke at that time?

A Legally, no; morally, yes.

Q What was your legal-- what was your obligation, your fee arrangement with John Ebbecke?

A Six percent.

Q And six percent. Was that contingent upon any eventuality?

A Yes, yes.

Q What was the eventuality it was contingent upon?

A Obtaining financing for Alpha.

Q In what amount, approximately?

A Well, originally it was hoped to be $350,000, which was an SBA loan.

Q And if he had obtained that SBA loan, he would be entitled to six percent, is that correct?

A Yes.

Q Did you have any fee arrangement to pay him by the hour for any work that he did in connection with attempting to get that SBA loan? Yes or no?

A No. No. But may I add to that?

Mr. Ebbecke went to a manufacturer and got him to reduce our indebtedness by roughly $200,000.

Q And was that contingent upon any particular event?

A Oh, yes, yes, it was.

Q What event was that?

A This is true, that within a certain period we would get financing, no matter from where or whom, and we would get $200,000 knocked off of our indebtedness.

Q And basically that really depended on Mr. Ebbecke being successful in getting that SBA loan?

A Yes, yes, right.

Q Otherwise that agreement to cut off $200,000 was not legally binding on the company at all, is that correct?

A Correct, correct, yes.

Q As of December 6, 1974, did you, Mr. Jack Kitson, did Alpha Scaffolding Company have a debt owing to John Ebbecke in the amount of $15,000?

A No.

Q Had he asked you to pay him $15,000 at or about December 6, 1974?

A No.

John had sort of requested occasionally money, but we were in no position to grant it, and this would be up-front money,

Q You turned him down?

A Yes, yes.

Q When did you first learn that a check for $15,000 had been issued to Gramercy Capital, Ltd. by Alpha Scaffolding on a check signed by you?

A When I went down to the bank, the Manufacturers Hanover Trust. I was called down there because of certain discrepancies in the account. Then they showed me some checks and asked me if I had signed them. Some I had, some I hadn't and which had been debited or whatever to the Alpha account.

That was the time.

Q And was that the first time that you knew that?

A Oh, yes.

Q And were you surprised?

A Excuse me?

Q Were you surprised?

A I was devastated, because that wasn't the only thing I was shown.

Q Directing your attention to the signature "William J. Kitson," is that your signature?

A Yes, yes.

THE COURT: I am sorry, I do not think the record is clear.

Did you show him Government's Exhibit 60?

MR. REILLY: Yes.

Q Would you turn it over, please?

A Oh, I'm sorry.

Q That is all right.

A You mean on the back of the check?

THE COURT: No.

MR. REILLY: I am showing the witness Government's Exhibit 60 and I am showing him on the front side of the check the signature "William J. Kitson."

A Yes, that is mine.

Q That appears to be--

A That is mine, yes, yes.

Q How did it happen that this signature came to appear on this check, do you know?

A Oh, yes, I do know, because Mr. LeVien called me and said he had a problem with the bank records and he accidentally or otherwise had gotten money into the wrong accounts and the only way he could get them out was by my signing checks for the money to be released, you know, which I was stupid enough to do it. That's how this came about.

Q And you did sign counterchecks in blank, is that correct?

A Yes. I signed two or three, I would say.

Q You gave them to Frank LeVien, is that right?

A Yes. John Ebbecke wasn't there.

Q I understand. But you gave them to Frank LeVien?

A Right.

Q And as far as you know, this is one of those checks?

A Yes, yes, I would say it is.

THE COURT: Am I correct that when you signed your name to Government's Exhibit 60, it was blank as to date, payee and amount?

THE WITNESS: Yes, your Honor, that's correct. Yes.

MR. REILLY: No further questions.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Kitson, did Mr. Ebbecke ever ask you to give him any checks signed in blank?

A No, never.

Q With respect to this SBA loan, do you know whether or not Mr. Ebbecke actually obtained a commitment for this loan?

A I believe he did. I believe he, through another bank, made progress.

Q So Mr. Ebbecke obtained a commitment, he fulfilled all he had to do to obtain a commission, is that correct?

A No, because unless it was finalized it was of no use to the corporation. In other words, if we had no use of the cash we had no value to us.

Q Cal you tell us why it was not finalized?

A Yes. I think one of the reasons was in the meantime my two associates--I was president, but my two associates owned shares and they wanted to sell out to a company called Davega Stores, Davega Sporting Goods.

When I was in England at my father's funeral at the later part of 1974, I got a phone call, "You get back here right away, we are selling out to Davega," so it was a fait accompli so I couldn't stop it.

At this time Davega now takes over the totality of the thing. But I do believe that they pushed for the SBA loan. How far they got or what I don't know, because they fired me shortly afterwards.

Q However, Alpha Scaffolding could have proceeded and completed the SBA loan had they so chosen, is that correct?

A No, because they were no longer an individual entity, they were a part of a conglomerate.

Q What I am trying to say, had they not sold out to Davega?

A Yes, if they hadn't sold us and my two associates and I agreed to put up personal collateral, and there was some resistance on their part, yes, I think it could have gone through with another bank. It wouldn't be Manufacturers Hanover.

Q You mentioned you felt a moral obligation to Mr. Ebbecke.

A Yes, I did.

Q Do you feel that this $15,000 was earned by him in connection with the financing and the application for the SBA loan?

A No, I wouldn't say 15, because we got $200,000 knocked off our total indebtedness to the manufacturer.

Now, had all these things worked out, had the thing been done in time, which it wasn't, by the way, forgetting Davega for the minute, had it been done by the time set up by the manufacturer and everything, I would say yes. But it didn't work out that way.

Q Did you ever ask Mr. Ebbecke for the return of this money or any portion of it?

A No, no.

MR. WEINBERG: I have no further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Kitson, do you know who arranged for the takeover of the Alpha Company by Davega?

A Well, the introduction was John Ebbecke, but I put up some resistance to it because at the same time this was happening through a British firm, friends of mine, the largest in the world of its type--

THE COURT: I think you have answered the question. Thank you.

THE WITNESS: Okay. Okay.

Q Did John Ebbecke assume a position in Davega Corporation shortly after Alpha had been taken over?

A Yes.

Q What position was that?

A I think treasurer.

Q And when were you terminated?

A Let's see now.

Oh, I can't remember. Oh, yes, the day of infamy.

August the 1st, I think it was, in 1975 that would have to be.

Q Was Mr. Ebbecke already the treasurer at that time?

A I think so. I think so. But it was such bedlam, a lot of confusion there, I don't know what was what.

Q Why haven't you asked Mr. Ebbecke for the $15,000 back?

A Well, when I saw what had happened at the bank, that was only a small portion of the total fiasco. I thought it would have to sort itself out.

Q Did you recognize the $15,000 check as a valid obligation of Alpha Scaffolding and yourself?

A No, no.

Q Has the bank attempted to collect that $15,000 from you?

A The bank sent a note way back which said that in view of the fact that the corporation had not seen fit to honor it, they would like me to pay it, and I simply replied and said, "Refer to the transactions as per attached sheet," which they had already given me, where it shows this in and that out without my knowledge, since which I have heard nothing.

Q You do not recognize the obligation to pay $15,000 to the bank, is that correct?

A Well, I recognize none of those obligations in the sense that it devastated my company and me with what they did with our account.

MR. REILLY: No further questions.

RECROSS EXAMINATION

BY MR. WEINBERG:

Q You said "what they did with our account." Who is "they"?

A Well, I would have to assume--I don't know. I'm assuming it was the vice president and treasurer, Mr. Frank LeVien, with whom I dealt, because there were credits, debits and fantastic--

The day after the loan was granted, the total amount was wiped off to somebody I never heard of. I issued two or three checks and they bounced and so forth, and that was only one part of it.

So when I say "they," I don't know whether somebody else has to okay what somebody does in a bank. I don't understand banking. I would think they would have to.

Q Thank you, sir.

MR. REILLY: No further questions, your Honor.

THE COURT: Thank you, Mr. Kitson.

(Witness excused.)

MR. REILLY: Your Honor, the next witness is Judd Finerman, Judah Finerman.

(Continued on page 274.)

JUDAH FEINERMAN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Feinerman, how do you spell your name?

THE COURT: He spelled it. F-e-i-n-e-r-m-a-n.

MR. REILLY: Thank you, your Honor.

Q Mr. Feinerman, what is your business?

A Insurance broker.

Q And for how many years have you been an insurance broker?

A Thirteen.

Q Prior to your entering the insurance business, were youtrained in any other discipline?

A Schooling or business?

Q Yes.

Are you a rabbi, an ordained rabbi?

A Yes, I'm an ordained rabbi.

Q Do you know an individual by the name of Frank LeVien?

A Yes, sir.

Q When did you meet Frank LeVien, to the best of your recollection?

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A I believe it was in 1974.

Q And do you know an individual by the--do you remember now or when in 1974? Was it the beginning, the middle or the end?

A The latter part.

Q The latter part of 1974?

A The latter part of 1973, I believe.

Q Do you know an individual by the name of John Ebbecke?

A Yes, sir.

Q And when and where did you meet him?

A I would say the early part of 1974 with Mr. LeVien.

Q Did Mr. LeVien ever ask you to lend $150,000 to one Dash Kalal?

A Yes, sir.

Q And do you recall when that was?

A I think it was March of 1974.

Q Would you please tell us how that transaction occurred?

A Mr. LeVien had asked me if I would lend money to somebody if he would guarantee the loan, and knowing that he was a vice president of the Manufacturers Hanover Bank, I said, "Well, if you guarantee the loan, I would make the loan."

Q Did you issue a check for $50,000 to Dash Kalal?

A Yes, sir.

Q Do you know what happened to Dash Kalal?

A Presumably he was killed on a plane in a plane crash.

Q You were so advised?

A I was so advised.

Q What did you then do with respect to your $50,000 note?

A I was paid by Mr. LeViten, who had co-signed the note.

Q Did you ask him to pay the loan?

A Yes, sir.

Q Do you recall the manner in which the payments were made?

A He had first paid me $25,000 and then subsequently paid me--gave me a check for $50,000 and asked me to give $20,000 to a Mr. Levy.

Q Do you know what Mr. Levy's position was, what was his business?

A Mr. Levy was the owner of a restaurant, Gatsby's.

Then subsequently, he asked me to give the other $5,000 to Mr. Levy.

Q Was that Frank LeVien who asked you to do that?

A Yes.

Q Did you have occasion to lend John Ebbecke any money at or about that time?

A Yes.

Q Do you recall when that was?

A In the middle of 1974.

Q Tell us how that happened. Did he come to you? Did he ask you for the money or what?

A Mr. Ebbecke asked me to lend him $10,000 and told me that Mr. LeVien would guarantee the loan, so I checked with Mr. LeVien, he said he would guarantee and, therefore, I loaned Mr. Ebbecke $10,000.

Q Did he tell you what he was going to use the money for?

A No, sir.

Q For what period of time was the loan?

A A very brief period of time. I don't recall exactly. I think about a month or so.

Q And when the note came due, did Mr. Ebbecke pay it?

A Mr. Ebbecke gave me a check for $10,000, which subsequently did not clear the bank.

Q What did you do when it did not clear the bank?

A I called Mr. LeVien and apprised him of the fact that I'm now short $10,000 and that I'm going to look to him for the $10,000.

Q What did Mr. LeVien say to you?

A That he will talk to Mr. Ebbecke and that Mr. Ebbecke should be paying me the $10,000, but if he doesn't then he, Mr. LeVien, will pay me back the $10,000.

Q Did you discuss with John Ebbecke the fact that his check had bounced?

A After I spoke to Mr. LeVien, because at that time I was not able to reach Mr. Ebbecke.

Q Yes?

A But subsequent to my conversation with Mr. LeVien, I did speak to Mr. Ebbecke about his check bouncing, yes.

Q And what did he say and what did you say?

A That he will--well, I told him that his check bounced and this is no way to be repaying my loan.

He said, well, he is going to have the money very shortly, it's some sort of error and he will make good the $10,000.

Q Did you hear from Mr. Ebbecke again?

A Shortly thereafter he called to say that he has the $10,000.

Q Did he tell you where he was getting it from?

A I don't think so.

Q And what did you say or what did he tell you with respect to picking up the $10,000?

A Well, he said he's at the bank with Mr. LeVien and he has the $10,000. This was the middle of the afternoon, like on or about 2:30 or so in the afternoon.

So I told him I couldn't get over there, so I sent somebody from my office to the bank to pick up the check and take it over to my bank, which is the National Bank of North America, to deposit to my account.

Q To your knowledge, was it deposited?

A Pardon?

Q To your knowledge, was that check deposited?

A Yes, sir.

Q I am going to show you a series of exhibits and ask you if you can identify these exhibits.

Exhibit No. 66, can you identify that? (Handing).

A Yes, sir.

Q What is that?

A This is the note that was signed by Mr. Ebbecke and co-signed by Mr. LeVien for the $10,000.

Q Dated when?

A Dated June 6, 1974.

Q I am going to show you Exhibit 67 for identification (handing).

Do you recognize that?

A Yes. This is my check to Mr. John Ebbecke, dated June 7th, for $10,000.

The back of it said, "Loan per promissory note of June 6, 1974."

Q Exhibit 68, do you recognize that? (Handing.)

A This is a copy of the deposit slip and check from Gramercy Capital repaying me the $10,000 on July 12. This is the check that was returned from the bank.

Q Do you know when that copy of the check was made?

A When this photo was made?

Q Yes. With respect to the time of the deposit slip.

A I would have to say it was made on July 15, the date that we were depositing it.

Q Is that your customary practice, to photostat copies of deposits?

A On personal matters, yes.

Q Showing you now Exhibits 69 and 70, can you identify those exhibits?

A Yes.

Q What is that?

A This is the notice from the bank that the Gramercy Capital, Ltd. check has been--is being returned for insufficient funds.

Q And when did you receive those or how did you receive those?

A Well, first we were called by the bank to tell us that there was a check that is coming back, but then this came back and it is dated--one is dated 7/18/74 and the other is dated 7/24/74, and it would come in the normal course in the mail.

Q Showing you Exhibit No. 71 for identification, what is that?

A This is the original check of Gramercy Capital, Ltd., to me for $10,000, which check was returned for insufficient funds.

Q And did the bank return it to you?

A The bank would have returned it to me, yes.

THE COURT: Is that the original of the check which is part of Exhibit 68?

THE WITNESS: Yes, sir.

THE COURT: Very well.

Q And, finally, directing your attention to Exhibit 72 for identification, can you identify that?

A This is a deposit slip, duplicate deposit slip fo a $10,000 deposit to my account of July 26, 1974.

Q Was that in connection with the deposit of the bank check that Mr. Ebbecke made available to you, to your knowledge?

A I would have to check.

Q I will show you, then, Government's Exhibit No. 73 for identification (handing).

What is that?

A This is my monthly statement from the National Bank of North America, together with deuplicates of reference to the return of the $10,000 Gramercy Capital check.

Q I am showing you now Government's Exhibit No. 11 for identification, which is--I will describe it first.

It is not for identification, it is in evidence.

It is a check from the Manufacturers Hanover Trust Company to Judd Feinerman, dated 7/26/74 in the amount of $10,000.

Does that bear an endorsement on that check?

A Yes.

Q What is the date of the endorsement or what is the date of the deposit?

A It is stamped on the back "July 26, 1974."

Q And is that endorsement in your name?

A This endorsement is the handwriting of somebody who works for me which says, "For deposit only, Judd Feinerman."

Q Again showing you Government's Exhibit 72 for identification, can you state what the $10,000 refers to in that deposit slip?

A Yes. This would be the deposit of the $10,000 from the Manufacturers Hanover check of $10,000 to my account.

Q Thank you.

MR. REILLY: I offer in evidence these exhibits which were just identified, not Government's Exhibit 11.

THE COURT: That would be Exhibits 66 through 73, is that right?

MR. REILLY: That is correct, your Honor.

THE COURT: Can I ask what Exhibit 70 is?

MR. REILLY: Exhibit No. 70 is a debit memo with respect to a $10,000 check returned for insufficient funds.

THE COURT: Are there two debit memos, 69 and 70?

MR. REILLY: 69 is a debit memo dated 7/18/74 and 70 is a debit memo dated 7/24/74, both with respect to Gramercy Capital, Ltd., $10,000.

THE COURT: Very well.

Show the proposed exhibits to Mr. Weinberg.

(Pause.)

MR. WEINBERG: I have no objection.

THE COURT: Received.

xxx (Government's Exhibits 66 through 73 for identification, respectively, were received in evidence.)

MR. REILLY: No further questions.

THE COURT: You may inquire, Mr. Weinberg.

MR. WEINBERG: I have no questions, your Honor.

THE COURT: No questions?

MR. WEINBERG: No.

THE COURT: Nothing further of this witness, gentlemen?

MR. REILLY: No, your Honor, we have nothing further of Mr. Feinerman.

THE COURT: You are excused. You may leave.

(Witness excused.)

MR. REILLY: Your Honor, subject to your Honor's reconsideration of an earlier application, the Government rests.

THE COURT: Very well.

Ladies and gentlemen, we have some legal matters to take up which I estimate will consume approximately 15 minutes.

It is now a quarter to 1:00.

I am going to excuse the jury for lunch and direct that you return at 2:00 p.m.

Please do not discuss this case among yourselves or with anyone else.

Should you learn anything about the case from any source outside of the courtroom, you are directed to report the matter to me promptly upon your return.

Finally, please keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

The jury is excused. You are directed to return to continue hearing this case at 2:00 p.m.

(The jury left the courtroom.)

THE COURT: Let the record reflect that the jury has left the courtroom.

We will turn first to the ruling which the court made this morning.

I will hear counsel if there is anything else that counsel wishes to add to what has been said already.

MR. REILLY: The Government has nothing substantially to add, your Honor.

We just wish to stress the similarity of a fraudulent financial operation done with a bank, the similarity between the Manufacturers Hanover Trust Company misapplication of funds with LeVien and the forging of phony letters of credit, letters of commitment and even getting the assistance of the bank manager at the bank of Hempstead to validate what is basically a phony financial situation.

We think these are sufficiently related, especially in view of the critical issue here of knowledge and intent.

On cross examination, Mr. Weinberg has constantly tried to elicit from the account witnesses that they did not tell Mr. Ebbecke certain things or they spoke with Mr. LeVien and that as far as--for example, Mr. Koch had not told Mr. Ebbecke in advance about the $255,000 CD.

The entire thrust of that cross examination is to show that Mr. Ebbecke was duped as well as anybody else.

We, therefore, think that since knowledge and intent is put in issue that this is a critical evidence to show that Mr. Ebbecke had the requisite guilty intent

THE COURT: I would certainly agree that knowledge and intent are at issue here.

The question in the court's mind, which I have articulated previously, is whether they are--that is, the proof which you wish to adduce--constitutes prior similar acts.

I would suggest that the section we should be addressing ourselves to in the Federal Rules of Evidence is Rule 404(B).

Is there anyone who takes exception to that, that that is the pertinent section?

MR. REILLY: No, your Honor.

THE COURT: You agree?

MR. REILLY: That is correct.

THE COURT: Very well.

It is my understanding that there is no mechanical rule. The trial judge is required to rule on the matter of whether there is undue prejudice which outweighs the probative value of the evidence. That is the essential balance which we must look to.

My understanding of the legislative purpose is that the House, through the report of its Judiciary Committee, anticipated that with respect to permissible uses of evidence such as you seek to admit here, the trial judge should be limited to excluding such evidence only on the basis of prejudice, confusion or waste of time.

I suggest that I have grounded my ruling up until now on two grounds, really, which interrelate. They are prejudice and confusion.

I would, of course, give the jury a limiting instruction, but I am not certain at this point, in view of the nature of the evidence to be presented, whether that will avoid confusion.

Needless to say, evidence of other crimes is most convincing on the issues such as intent and knowledge.

I have difficulty in grasping, perhaps, precisely how the proposed evidence may tend to prove or disprove the consequential factual issues of intent or knowledge without at the same time introducing confusion as to whether or not the act really is similar.

I think the Government's point to me would be that both acts constitute fraud and, therefore, there is overall similarity.

Am I correct on that?

MR. REILLY: That is correct, your Honor. And, further, that they involve the relationships of a money broker with a bank.

THE COURT: Do you have any case support for your argument where the matter may have been reviewed within the last two or three years in this or another

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circuit?

I recognize the general proposition. The real question is whether these are truly similar acts as those words should be interpreted.

MR. REILLY: Your Honor, I do not have any case authority that comes to mind immediately.

I will be prepared to search for some over the luncheon hour.

THE COURT: Does the defendant's attorney concede that the issues of knowledge and intent are present here? Because if he does, I am left with only a determination of whether there will be confusion or prejudice.

MR. WEINBERG: Yes, your Honor, I think knowledge and intent are vital here.

THE COURT: Why shouldn't I permit this evidence to go in with an appropriate limiting instruction?

MR. WEINBERG: My objection to this evidnece was that, Number one, it is not a truly similar act and, Number two, that it would be prejudicial and confusing to the jury.

THE COURT: I am inclined to adhere to my prior determination.

I will consider the matter during the luncheon recess.

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I am prepared to hear anything each side wishes to present at five minutes of 2:00.

I am prepared to hear any motion or motions which the defendant wishes to make at this time.

MR. WEINBERG: Thank you, your Honor.

At this time the defendant moves for a judgment of acquittal on the indictment as a whole on the grounds, Number one that the Government has failed to prove a prima facie case in that I do not recall the Government offering any proof that the Manufacturers Hanover Bank is, in fact, insured by the Federal Deposit Insurance Corporation and, overall, there is a failure of proof as far as any agreement as far as count No. 1 is concerned between Mr. Ebbecke and Mr. LeVien which would constitute the alleged conspiracy.

As to Counts 2, 3 and 4, my motion is grounded on the failure of any proof of any prior knowledge by Mr. Ebbecke of the actions taken by Mr. LeVien, and if I read the cases correctly, unless an alleged aider or abetter has prior knowledge, he cannot be convicted as an aider and abetter.

I refer particularly to count No. 4. Mr. Koch testified on the stand Mr. Ebbecke had no knowledge of the deposit of $255,000 into the bank until after it was accomplished, and on count No. 3 on the $1,500 where Mr. LeVien himself testified that Mr. Ebbecke had no knowledge as to the source of the funds.

THE COURT: Mr. Reilly?

MR. REILLY: Yes, your Honor.

I think the one valid point that has been raised here is that there is no evidence of the FDIC being involved here, and I must then respectfully ask the court to reopen the Government's case to allow it to produce a witness from the Manufacturers Hanover Trust Company, in the absence of a stipulation, that it is insured.

THE COURT: I would advise defense counsel that I would give the Government the luncheon recess to produce such a witness if counsel feels that he is unable to stipulate.

I think if the Government has that opportunity, they can get someone here from the bank. But if defense counsel wants to stand on the matter, I would then tell you that since I have reserved already on one matter of proof, I would be prepared to exercise my discretion to reopen the Government's case for that limited purpose.

MR. WEINBERG: If your Honor please, in view of Mr. Reilly's offer of proof I will stipulate.

He had never asked for it previously. I would have done it previously.

MR. REILLY: He is correct, your Honor, it is the Government's fault.

THE COURT: Very well.

On that particular point, let the record reflect that counsel have stipulated that the Manufacturers Hanover Trust Company was, during the time in question, a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

Is that correct, gentlemen?

MR. REILLY: That is correct, your Honor.

MR. WEINBERG: That is correct.

THE COURT: Very well.

Turning to the other points made by your adversary, Mr. Reilly?

MR. REILLY: Yes.

Quickly, your Honor, Mr. LeVien has testified that he had prior discussions with John Ebbecke, and the testimony of Karl Koch is not that inconsistent.

He had told Mr. Ebbecke that he had these funds available and that he was putting them into CD's, but he did not give any specifics and, further, immediately upon giving the money to Frank LeVien at the close of business, Koch said he went back to Gatsby's and told the whole story to Mr. Ebbecke, so Ebbecke had full knowledge before the critical date, that is December 5th, when the moneys were put into the Alpha account.

With respect to the $1,500, Mr. Ebbecke called up and asked for the money to be put in the account, and from prior dealings it is clear that Mr. Ebbecke was not a millionaire and that he had access to moneys such as in the $10,000 Cellini matter, etc.

THE COURT: The court is required on this motion to take the evidence in the light most favorable to the Government.

Doing so, I must agree with Mr. Reilly that the Government has proved the requisite prior knowledge on the part of Mr. Ebbecke to withstand a motion to dismiss at this juncture.

Accordingly, the defendant's motion to dismiss is in all respects denied.

MR. WEINBERG: Thank you, your Honor.

MR. REILLY: Your Honor, there are some logistical problems here which are further complicated by the contingencies here. I am going to do some reserach on the law, but most of the time to interview Mr. Wadsworth, and I have to get Mr. Kaplan back here if your Honor is going

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to rule.

May I assume if your Honor adheres to your original determination and denies our application, the Government will then rest after the stipulation is then read into the record.

It would help us to know whether we should come back prepared to cross examine or whether your Honor will direct us to give closing statements in the event that there is no defense case.

Perhaps Mr. Weinberg can assist us in that regard.

THE COURT: Now that the court has denied the defendant's motions to dismiss, Mr. Weinberg has reached the point where he must either present proof this afternoon or rest his case.

I would call upon Mr. Weinberg to advise the court of his intentions.

MR. WEINBERG: If your Honor please, my intentions are to go ahead and present proof, Mr. Ebbecke will take the stand.

THE COURT: I gather that you intend officially and clearly to call Mr. Ebbecke?

MR. WEINBERG: Yes, I do, your Honor.

THE COURT: Very well.

Under the circumstances, with that statement having been made to the court, I am going to rule now on the Government's application.

Although the matter is not free from doubt and I have been, since you brought up the point, I have been perusing Judge Weinstein's section in Weinstein on evidence relating to 404(B) and I can see a very valid argument to be made for the Government's position, particularly in light of Mr. Weinberg's candid statement that he does regard knowledge and intent as matters at issue.

However, having taken the whole matter on balance, I am going to adhere to my original ruling.

And so it is clear, I am going to at this stage exclude this evidence as part of the Government's direct case. But assuming the defendant testifies and also assuming for the moment that he places his character in issue, I suggest that the court would entertain an application to present this evidence in the form of rebuttal evidence.

I would suggest, Mr. Reilly, that you equip yourself to argue on that point so that the court will be benefitted by your advice.

MR. REILLY: Thank you, your Honor.

THE COURT: Very well.

We will make it, then, at 2:00 p.m.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

Mr. Reilly?

MR. REILLY: The Government rests, your Honor.

THE COURT: Very well.

Mr. Weinberg.

MR. WEINBERG: The defense is ready to proceed, sir.

THE COURT: You may proceed, sir.

MR. WEINBERG: The defense calls Mr. John Ebbecke.

JOHN MICHAEL EBBECKE,

the defendant, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Ebbecke, are you married?

A Yes, I am, sir.

Q Do you live at home with your wife?

A Yes, I do, sir.

Q Children?

A Yes, sir.

Q What is your present occupation?

A I'm now treasurer of Advertising Media Graphics, Inc. at 99 Fresh Hollow Road in Westbury.

THE COURT: Can all the jurors hear Mr. Ebbecke? You cannot?

Please, sir, keep your voice up so not only can your counsel hear you but the farthest juror as well.

A I'm treasurer for the Advertising Media Graphics, Inc. in Westbury, New York.

Q What is the business of Advertising Media Graphics, Inc.?

A Pretty much what it specifies; it's involved with commercial advertising, graphics work and it handles media-type advertisements for commercial clients.

Q Mr. Ebbecke, have you been previously employed by a bank or a number of banks?

A Yes, sir.

Q Can you tell the court and the jury what your banking experience has been?

A After I was discharged from the service--

Q What year was that?

A 1959.

I was employed by the Irving Trust Company, where I worked in the operational section and in loan administration, until 1967, at which time I took another position at Security National Bank in Long Island, where I worked in the commercial banking division with a senior vice president that I previously worked with at Irving Trust Company.

I worked there for approximately two-and-a-half years in the capacity as a lending officer and also as a coordinator between a Long Island bank and New York City banks, meaning, you know, corresponding banking relationships such as handling letters of credit, money market investments and whatever.

During that period of time at Security I was in charge and could move for Security National Bank in the money market position of approximately $24 million on a daily basis, which was the excess of the bank, you know, that had to be invested on a daily basis.

I then got an opportunity to move into a better position at Schroder Banking Corporation, which was at 67 Broad Street, where I became a domestic lending officer and also a correspondent banking officer, which consists of handling banking accounts in various banks and selling services to smaller banks.

THE COURT: When did you become employed by the Schroder Banking Corporation?

THE WITNESS: I believe it was in 1970, your Honor.

A I worked there only approximately a year, because at that time I lived in Stonybrook and there was a personal problem I had at home, you know, my wife was sick, so I had an opportunity to move into a Long Island bank, where I was employed as assistant vice president in charge of loan administration at Long Island Trust Company.

THE COURT: When did you join that bank?

THE WITNESS: I guess it was 1975. It was 1971, your Honor.

A From there I worked there approximately a year-and-a-half handling administrative responsibilities, such as setting up a credit department, handling credit investigation units, which is one who makes analysis of financial statements and an analytical section of the bank and also to regain control of the bank in general as far as their commercial lending portfolio.

That was necessary, because Long Island Trust Company was growing rather rapidly at that time, and I think still is the largest independent Long Island bank out there.

I then wanted to get back into direct lending. They wanted me to stay in administrative work.

I got an opportunity to go with one of my clients, who was in real estate, and I also had an opportunity to start a financial consulting firm of my own at that time.

Q From the Long Island Trust Company you went into your own business as a financial consultant?

A Yes, sir.

Q What was that year?

A Pardon me?

Q When did that take place?

A Right after I left Long Island Trust Company. I guess in 1972--yes, about 1972.

Q And as a financial consultant, what was your function?

A Basically the same thing a commercial lending officer would do, other than I would look a little deeper than a normal commercial lending officer, because theway banking has moved so rapidly and whatever, lending officers normally make loans predicated on what a customer would ask him for and that is not necessarily what they need.

So I would do an analysis of their financial statement, make suggestions to their professional help, which are accountants or lawyers or whatever, as to the structure of the company and hopefully negotiate with my customer's bank and try to generate a proper type of financing arrangement for them or evaluate his insurance portfolio to economize and whatever.

I didn't have any expertise as far as management was concerned, but I did work with management-type consultants that would do evaluations internally of the companies that were my clients and make suggestions and recommendations to economize or whatever.

Q Did there come a time when you left that field to go into something else?

A Yes.

Unfortunately, during that period of time, I was pretty successful in getting into a couple of real estate ventures, which were land situations, and I also had several commercial clients, one of which wanted to sell out.

At the time I felt it was a very lucrative investment for a fellow in my position to get involved with. It was a leisure-time business. The name of the business was Long Island Boat & Motor Sales.

After negotiating with the principals of that company, which was in existence for a number of years prior to me taking it over, I moved into a business unrelated to my type of background and I also thought I had the proper kind of management to put in there and, unfortunately, I bought a business that I didn't know much about and I found myself president of Long Island Boat & Motor Sales.

Q When did this take place?

A About 19--the end of 1972.

Q This now is your fulltime occupation?

A It wasn't intended to be the fulltime occupation, but unfortunately it turned out to be a fulltime occupation.

The only thing I knew how to do was to work with banking institutions or work with the financial end of it, and I built the business up, unfortunately, during a very bad period of time; the economy was doing down and I was building up.

And I secured a floor plan, which is financing of various type of boats, to a tune of about a million dollars, which my wife and myself had to both personally guarantee, and I secured unsecured accommodations from a number of Long Island banks to sustain the operation as I was growing.

Unfortunately, as things would have it, I hit 26 days of rain in June of that year and I was stuck with better than a million-and-a-half of floor plan inventory.

As the rates of interest started going up, naturally, my business started to suffer cash flow, like my clients do now, and I was looking to get myself out from under, so I was looking--

Q Was it at that time that you met Mr. LeVien?

A Not right away, no.

I was looking to Wall Street to try to take my company public, and I did secure a prospectus and I did get an underwriting accepted by an underwriting firm, but that underwriting firm, unfortunately, went backrupt and so did my underwriting proposal.

At that time, I then tried to seek some long-term financing which wasn't considered to be very attractive at that time because of the money market, and my insurance broker, who is a life insurance broker, Gerson Fabe, who I knew way back when I was in banking, indicated that he was dealing with the Manufacturers Hanover Trust Company at 42nd Street and that they were actively soliciting accounts, you know, opposite what the Long Island banks were doing and that he would introduce some of the lending officers to me to possibly consider recasting my overall package.

He then brought out, I guess during the summer of 1973, a Raymond Rappel, who was vice president of the 42nd Street officer, and Frank LeVien, who then was assistant secretary of the 42nd Street office.

Q Were they together?

A Yes.

They both looked at all my locations, evaluated the package as an overall financial package and they indicated to me, not as a commitment, but that they were--that they, the two of them as a combine, were capable of lending the amount of money that I needed, which was $350,000.

They then went back to the office. Naturally, they had to do credit investigations of my operation. They came back and they indicated to me at that time that they were going to move forward and advance a five-year $350,000 term loan to my company.

Unfortunately, as things would happen, Manufacturers Hanover Holding Corporation recently completed the acquisition of a related bank, which was the First National Bank of Bay Shore at that time, and it was the recommendation of the consumer finance division which would handle my retail paper that was generated from the boatyard that I not be financed through 42nd Street but I would be financed through the First National Bank in Bay Shore.

I then, by way of introduction of Mr. Rappel, and by long and lengthy analyses and whatever, they gave this to John Harmes and a Jim Humes.

John Harmes was the president of the First National Bank of Bay Shore and Jim Humes was the executive vice president.

They evaluated the package, and it was at their recommendation and suggestion that rather than do a conventional-type loan, that they were more involved with Small Business Administration-type loans and they started to pursue that particular avenue.

They brought an SBA regional VP, a Kent Senhauser, to the bank, where I met him, and he went over the application that was made up by the bank and he was going to move in the direction to approve that particular loan situation.

Unfortunately, I had several banks that were involved with my operation and they were anxiously awaiting to be cleaned up--incidentally, previous to that I requested and gave the opportunity to all of the banks that I had been banking with to seriously entertain a term loan in lieu of a short-term type of loan.

Because they were all involved, no one bank that was involved wanted to bail out theother banks, so it was really necessary to seek another bank to bail out all the banks.

It seems confusing. It was at the time.

I then was waiting on the SBA to come through with their written approval, and during thatperiod of time, unfortunately, because I wasn't under the shelter of a Chapter 11 or whatever, one of my creditors put a levy of attachment on one of my locations, which they had the right to do because they were demand notes, and rattled or shook up the whole loan proposal that Manufacturers was entertaining by way of the First National Bank of Bay Shore, and then we tried to have that levy of attachment lifted and I was unsuccessful and then Mr. LeVien suggested I seek a Chapter 11, which I wasn't very inclined to get involved with because I was hoping I could do it in a more conventional basis, and then he introduced me to a Sam Roseman, who was an attorney, who recommended that I use the firm of Levy, Levy & Rubach.

During that period of time, naturally, my credibility was falling down there rather rapidly, because I was personally on these loans and so was my wife and I was unable to borrow money, you know, on my own name at that point.

So Mr. LeVien--and I was very appreciative of it--

suggested that I use a nominee or something to secure additional moneys.

It may sound strange, but ironically enough, you need a retainer fee to go bankrupt, and I didn't have the fee that Levy, Levy & Rubach wanted at the time, which was $10,000.

It was then discussed with Gerson Fabe and Frank LeVien, who was sympathetic to my cause, and due to the fact that I still had somewhat a period to be unencumbered boats and another operation that wasn't directly involved with Long Island Boat & Motor Sales that if I moved into 11, I could get my operation to come back into focus and thatthe SBA loan then would come through.

Unfortunately, I moved too late, and the secured creditor had already moved--I don't understand the legal technicalities of it, but you can't overturn the secured creditor during this period of time if they have more than 20 days.

Unfortunately, I was forced to adjudicate bankrupt, I guess it was September 20 of that year, which was 1973.

I then, you know, was literally tapped out and the only alternative I had to do was to try to get back into a business that I should never have gotten out of, and I question that now, too. But I went back into financial consulting.

It wasn't from my knowledge of reading books, it was through the practicality of running a business, knowing the inside of what a businessman really does go through and what the day-to-day problems are, what payday means when you got to make payroll and what the tax department can do to you if you don't pay your taxes or whatever.

This was just an added benefit that I could supply to my customers, you know, and I went back into the consulting business.

Q While you were with Long Island marine, Long Island Boat, did there come a time when a loan was arranged with Mr. Fabe and Mr. LeVien?

A That was the $10,000 loan that I was referring to.

Mr. Fabe, which was documented in the law office of his chossing and I was not represented by counsel, I singed separate documents to Mr. Fabe, and Mr. LeVien was there, and then through the installment loan department I got a 12-month--I didn't get it, but Gerson Fabe got a 12-month, $10,000 installment loan from Manufacturers Hanover.

You know, that money used to pay for Levy, Levy & Rubach for Long Island Motor Boat Sales.

Q Did you repay that loan?

A I repaid a good portion of it, and because of--see, I never personally filed bankruptcy. I had a countersuit against the people [illegible]ght the marina from and I didn't choose to take a [illegible]ally bankruptcy, so so I was trying to make restitution through fees and whatever to the banks that were involved with Long Island Boat & Motor Sales and, to be honest with you, my cash flow wasn't that heavy to sustain a $740 payment every month in addition to trying to sustain an office.

I made, I would say, probably--probably I cut into that thing six or seven thousand dollars. I'm not sure of the fees, because there were late payments and whatever related to it.

I got to say that my relationship with Gerson Fabe was strained because of the money and in all fairness to Fabe, could understand why he was upset.

There was a separate agreement that was not made at the time that I was there with LeVien, which I later learned about.

You see, I was going to give Mr. Fabe some equity in Bates Boat Sales, which was another one of my operations, which was successful in fighting off the bankruptcy and, in addition, I gave him collateral on these boats and whatever, and it is my understanding that Mr. Fabe and Mr. LeVien had an agreement where Mr. LeVien was to share in this position that I was giving to Mr. Fabe.

Q Were you aware of that?

A Not at the time, but I became aware of that, yes.

Q And then you went back to financial consulting, is that ocrrect?

A Yes. Then I went back to the business I was in originally.

Q Where did you open up an office?

A I didn't originally open up an office. I originally started working with a David Koch, which is unrelated to Karl Koch, who was a **certiorari** attorney and involved real estate, who I knew previously to my taking over the marina.

Q Where was this Mr. Koch located?

A 170 Old Country Road.

Q That is Mineola?

A Yes.

And I worked with Karl Koch, although he practiced at his **certiorari** proceeding-type of law--

Q You mean David Koch?

A David Koch, I'm sorry.

And I was working on situations through real estate people and whatever that came to his office to seek some financial assistance.

David Koch, during that period of time, introduced me to George Weiss who was also an attorney, who was counsel for the Vanguard National Bank, where David Koch had an arrangement with the Vanguard National Bank to recieve--he never really disclosed exactly what, but he received a compensation for referral of business, either in the form of certifidate of deposits or whatever, and it was my understanding that this was registered in an above-board fashion with the Federal Reserve banking system and whatever.

Q During this time, Mr. Ebbecke, what different banks would you use to bring your customers in as client?

A Well, I was dealing with Hempstead, the Vanguard Bank, State Bank of Long Island, First National Bank of Bay Shore, Security National Bank before it was taken over by Chemical, Chemical Bank itself, National Bank of North America, the Mid-Atlantic Bank of New Jersey, the Philadelphia National Bank, which was part of Congress Factors, Trifoil Finance Company, which is an affiliate of the Fidelity National Bank in Philly, and the Sussex

County.

There was just a number of different banks--the Central State Bank, the Chelsea National Bank, Irving Trust Company, Bankers Trust.

Youknow, I dealt pretty much with the banks that my customers might have been involved with at the time or with people I used to know in banking that I would introduce situations to.

Q You also dealt with the Manufacturers Hanover Trust Company?

A And the Manufacturers Hanover Trust Company.

Q And you were dealing there with Mr. LeVien?

A I was with, at first, Ray Rappel, who was the vice president who came out and he--

THE COURT: How do you spell that?

THE WITNESS: I'm not sure, your Honor. I think it is R-a-p-p-e-l.

A Raymond Rappel was the assistant head of the 42nd Street branch office, and because of the size of the loans that I was dealing with initially, and Mr. Rappel had a sizeable credit line, he suggested that I would introduced most of my business by way of Frank LeVien, who really at that time was a new business-development type of officer, not a so-called credit officer.

The first transaction I had other than the one I just mentioned that was for myself was that I took a bank out of--I took a loan out of Manufacturers Hanover Turst Company and placed it with the Vanguard National Bank.

Q What loan was that?

A That was a loan of Dash Kalal.

Q Can you tell us what you know about Dash Kalal and that transaction?

A Dash Kala was involved with the United Nations. Initially he was an accountant or auditor for various embassies and he established a very strong relationship with the Royal Nepal Government, which, as I understand it, is at the top of India.

Through that relationship he knew the king and the prince and whoever at that particular country and was, you know, activiely working on various projects that were really on the drawingboard for the royal Nepal Government, as well as that he was a consultant similar to myself, but he was a consultant to nursing homes and making applications and whatever which was Dash Kalal Associates.

Both Mr. Lyons, who was the head of the branch, and Frank LeVien, discussed Dash Kalal with me, because I told

Frank LeVien that I had a relationship with the Vanguard, and the Vanguard Bank was a minority bank at that time and it was thought an affluent minority such as Mr. Kalal would be an excellent source of business for them.

And it appeared that Manufacturers Hanover's 42nd Street branch needed a clean-up, which is if a loan is put on a short-term basis, at the end of every year that particular customer, through whatever sources--it should be his own sources--cleans up his loan for at least a period of 30 days, and apparently Mr. Kalal wasn't able or didn't have the cash availability at the time to clean up this loan, so they gave me the financial statements, which I looked at, that appeared to be rather solid, and I believe--I brought Dash Kalal out that evening, it was after three o'clock, it was about five o'clock at night, and John Duncan, who was my driver at the time--it wasn't because I was so affluent I had a driver, but my license was suspended and I needed somebody to drive the car and John worked with me at the marina, and that's why he was with me all the time.

Anyway, myself and John Duncan went out to the Vanguard National Bank, and I met with Herb Ford, introduced him to Dash Kalal, and they discussed the loan and he was, you know, putting the loan on, subject to a credit investigation, which was given to him by way of Manufacturers Hanover Trust Company.

If I'm not mistaken, he spoke to both Mr. Lyons and Mr. LeVien in reference to this particular account.

The loan was secured, and he got a $60,000 loan that was on a demand basis, but it was the understanding that it would stay on for at least a year.

That money--I don't know exactly what he did with it, but that money was used to pay off an overdraft at the Manufacturers Hanover Trust Company, as well as retire some obligations that he had there at the time and clean the slate.

Mr. Lyons himself, who was the head of the branch, came over and thanked me and he said, "Well, John, we owe you one."

Then during that period of time, since I did have what appeared to be a very strong relationship with the Vanguard Bank, Mr. LeVien introduced me to one of the corresponding banking officers of Manufacturers Hanover, who was going to solicit that particular account.

In other words, Manufacturers Hanover would then try to secure the Vanguard National Bank account.

I think his name was Mr. McCarthy. I'm not really sure.

Also just about that time, a former officer of the Manufacturers Hanover became president of that bank, who was Dick Smith.

That was the first transaction I had with Manufacturers.

The second transaction was really similar to Dash Kalal. That was a--I think Pete Catalano, whatever, the company was J & B Maintenance Corp.

He, too, had an overdraft problem at the bank and he, too, had a loan situation that needed to be cleaned up.

Incidentally, this is not unusual. A lot of banks look to lay off what may not be good for them to another particular bank. I don't think the intention of Manufacturers or LeVien or Rappel or Lyons was to beat Vanguard National Bank out of, you know, by giving them junk, they were just giving them business that the Vanguard might have been interested in, because they seemed to be interested in going for, you know, that kind of business.

So I brought Mr.--I think his name was Catalano--out to the Vanguard National Bank, and he talked to John Bates, who then wasthe president, before Mr. Smith, and Herb Ford, and they reviewed the financial statements, they spoke to the Manufacturers Hanover Trust Company, they made their credit investigations or whatever and they then lent J & B Maintenance Corp. $125,000.

During that period of time, however, I have to say that both Mr. Kalal and J & B Maintenance people didn't maintain their account too well at the Vanguard National Bank, and George Weiss, who was counsel for the bank, was rather annoyed, to say the least, with the Manufacturers Hanover Trust Company because he felt that, you know, we were--we were set up or being duped--

MR. REILLY: I will object, your Honor.

THE COURT: Yes.

I think at this point, though a narrative story is fine,when it is interlaced with objectionable material, I think the objection is proper.

I will strike the last part of that about George Weiss and what George Weiss believed.

THE WITNESS: Sorry.

THE COURT: That is all right.

Q Mr. Ebbecke, what is the first client--who was the first client that you brought to the Manufacturers Hanover branch at 42nd Street?

A The first account that I introduced to that particular branch was International Digest, which was--I'm not sure even what type of company it was.

It was introduced to me by way of a law firm and it was a buy-out arrangement on some paper rights, and I introduced the loan to the Manufacturers.

In all fairness, it was a weak credit, I mean, but it was--

Q When did this take place?

A Pardon me?

Q Can you recall when this took place?

A No, I don't know the date. But it was--

Q Was it in the summer of 1974?

A No, it was prior to that.

Q Prior to that?

A Yes.

Q What is the first customer you brought in where a loan application was granted by Manufacturers?

A International Digest.

Q They granted them a loan?

A Yes.

Q They did? I'm sorry.

A And Mr. Lyons approved that loan, subject to a letter that he received from the Hempstead Bank that indicated that upon review or whatever, that the loan then would be converted into a term loan.

You know, Lyons put the loan on--really, he didn't care for theloan, but he did put it on.

Q And you were dealing with Mr. Lyons on this particular loan, is that correct?

A Yes.

Well, Mr. Lyons in all cases or Mr. Rappel had to approve these loans. It was no one officer that could approve a loan at the 42nd Street branch, and to my knowledge throughout the whole system. That was International Digest.

Q Did there come a time when you brought a client of yours named Andy's Marine to the Manufacturers Hanover branch at 42nd Street?

A Yes, Andy's Marine Service, Inc.

Q Tell us what happened with that.

A Well, Andy's Marine Service, Inc. was really an offspring of one of my companies, which was Bates Boat Sales, Inc.

Andy Nesbit, who was an excellent boat mechanic and serviceman, had an adjoining location next to Bates Boat Sales.

When Long Island Boat & Motor Sales closed down, I still had the shell at Bates Boat Sales, but Andy had a business that was next door and I had a location that was right next to him, but I didn't have a business.

He was having difficulty with his former landlord, and since I wasn't using the yard or the equipment, I spoke to Andy by way of John Duncan and made an arrangement to have Andy move over there and to use my travel lift and use my equipment on that particular location with the hope that Andy would be able to secure financing that I was looking for.

Q Did Andy get any financing from the Manufacturers Hanover?

A Ultimately he got a $25,000 loan from Manufacturers Hanover.

Q When did this take place?

A Again, I'm not sure of the date, but it was sometime June or July of, I guess, '74.

Q And whom did you deal with at Manufacturers Hanover on behalf of Andy's Marine?

A I didn't deal with anybody directly.

John Duncan went down and met with Frank LeVien and introduced Andy to Frank in my absence because I wasn't available at the time, and then I went down and Andy Nesbit met with, I believe, Ray Rappel and Frank LeVien to discuss the loan.

Actually, Andy wanted ultimately to get an SBA loan.

After Andy got his $25,000 loan, I went down to the SBA section of Manufacturers by way of Frank's introduction and they were looking at it.

You see, Andy was a minority and he was an excellent businessman and it just seemed like it would work out kind of well.

With the money that Andy got from the initial loan of $25,000, he bought the assets and the leasehold of Captain Brod, which was on Woodcliff Canal up the Bronx from Bates Boat Sales.

Q Were you with him when he made this purchase?

A Yes.

Q Did you see him write checks against the moneys that you believe were advanced to him?

A Yes. I believe he had to give--

THE COURT: Excuse me.

I think the checks would have to be the best evidence.

If the Government does not choose to object, I will not interpose. But when the witness says, "I saw a man writing checks," it does seem to me the checks are the best evidence here.

MR. REILLY: I object on that, your Honor. I object also on the ground of leading questions.

THE COURT: Very well.

Please proceed.

Q Were you with Mr. Nesbit when he went to purchase the boat yard?

A Yes.

Q When was that? When did that purchase take place?

A About a week after he got the $25,000 loan from Manufacturers.

Q And where did you go?

A We went to his--"his" meaning Mr. Lang, who owned--owned the land that the boat yard was on, we went to his attorney's office in Freeport.

Q At the time you went there with Mr. Nesbit, did you believe that the money was in Andy's Marine's account?

A Well, it was--I believe that Mr. Lang--I don't believe, I know for a fact Mr. Lang wanted a bank check and he got one.

Q When I say "the money," I mean the proceeds of the loan that Andy's Marine was given by the Manufacturers Hanover Bank.

A Did I believe the money was there?

Q Did you believe the proceeds of that loan were in Andy's Marine's account?

A I know it had to be in his account, because

Andy at that time--because I knew what his financial affairs were. He didn't have no $7,000.

Q Did you ever tell Mr. LeVien that he could draw against those proceeds?

A No, I did not.

Q Were you ever aware that he actually did draw against the proceeds of that loan?

A Not--no, not until later on, when it all came out, no.

Q Did there come a time when you brought a Mr. Frank Leone to the Manufacturers Hanover Bank?

A Yes, sir.

Q When was that?

A July or August of 1974.

Q Whom did you meet with at the bank?

A I didn't go to the bank branch. I met Frank LeVien and Eichler at the Gatsby's Restaurant for a luncheon.

I am just trying to think why--yes. It was because Frank was there quite a bit, and so was Mr. Eichler, and we sat down and we discussed, so I introduced Frank Leone to those fellows about starting a banking relationship.

Q What was discussed?

A Well, they asked the normal questions that

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anybody would ask.

They asked if he had financial statements on hand, which he didn't, of course. And they told him what they wanted. I believe they wanted the last three years, the latest interim financial statements and last three year, you know, financial statements, and to bring it to the bank and they would make a consideration as to his loan requests.

Q Was this done?

A Yes.

Q What was the result, if you know?

A Well, Leone initially told me, contrary to what--I know he got a $90,000 loan, but the total commitment was $150,000.

Q Who gave him--who told him that commitment--

MR. REILLY: I object. The total commitment is hearsay.

THE COURT: What do you want to do with this?

MR. REILLY: I am objecting on the grounds of hearsay.

THE COURT: What Leone told him?

MR. REILLY: What Mr. Leone told him.

THE COURT: Do you want to move to strike it?

MR. REILLY: Yes.

THE COURT: Strike it.

The jury will disregard what Mr. Leone told Mr. Ebbecke.

Q Do you know of your own knowledge of any line of credit that was extended by the Manufacturers Hanover Bank?

A Yes. Frank LeVien told me that he was making--along with Fred Lyons--a total commitment of $150,000.

Q There came a time when a check in the sum of $75,000 was drawn to Gramercy Capital, Ltd. and a check was drawn on the account of Gramercy Capital payable to Ficarra Furniture.

Do you recall that?

A Yes.

Q Do you want to tell us the circumstances of that transaction?

A It goes back--

THE COURT: Can we just go back a moment? It might be helpful to the jury.

I do not believe you have made any inquiry of the witness about Gramercy Capital Corporation.

If I missed it, I apologize. But I think the jury would like to know something about that company.

MR. WEINBERG: I apologize, your Honor.

Q Can you tell us about Gramercy Capital?

A Well, Gramercy Capital business was a financial consulting services.

Q Is that your business?

A Yes.

Q And that is the corporation that you use as your operating firm?

A Yes.

Q Ficarra Furniture, who was the principal of Ficarra Furniture?

A I believe the president was Frank Leone.

Q Will you then tell us now about that transaction involving the $75,000 from the Manufacturers into the Gramercy Capital account and $63,000 out of Gramercy Capital into Ficarra Furniture?

A Well, it's a lot of mix-up, but what happened is that a commitment for $150,000 was given to Frank Leone--

MR. REILLY: Objection.

THE COURT: Grounds?

MR. REILLY: No foundation, your Honor.

THE COURT: He did testify to this without objection about three minutes ago.

MR. REILLY: He said that Frank LeVien told him.

THE COURT: That is right.

MR. REILLY: I think the testimony should at least read that as far as he understood there was a commitment.

THE COURT: All right.

As far as you understood, and this apparently is based on what Mr. LeVien told you, Manufacturers Hanover had made a commitment of $150,000 to Ficarra Furniture, is that correct?

THE WITNESS: That's correct, yes.

THE COURT: Very well.

A Predicated on that, Frank Leone initially got a $90,000 loan--again, you call it hearsay but he did get the $90,000--and the additional moneys were purportedly advanced to his account and Leone drew checks against that account.

MR. REILLY: Objection.

THE COURT: Yes.

MR. REILLY: I move to strike that last statement.

THE CORRT: All right.

Unless you were present when Mr. Leone drew these checks--were you?

THE WITNESS: No, I was not.

THE COURT: I will strike it, then.

Q Tell us the circumstances of this transaction involving the $75,000 and the $68,000 check drawn against that, how did that come about?

A I was trying to explain.

Leone called me up screaming and, quote unquote, saying, "What the hell is that guy doing? He is going to ruin my business because I drew checks on the amount of money he was supposed to advance me and the checks are being bounced."

I called Frank. Frank said there was a problem with Fred Lyons about the additional advance and that he would have it corrected and that it might be a good idea to sit down and go over the whole transaction.

Needless to say, I was anxious to meet, because there was a fee involved with me, and we did go there, and I believe Jack Kitson was with me because he was driving the car, and Frank Lettieri was also present and Frank Leone and myself.

Frank Leone did say, "I don't gave a damn what you and Lettieri have going, all I want to know is I want to be able to draw against the money I'm borrowing, and I signed notes for the $150,000 and I want that damn money in my account."

LeVien then stated that he would straight this embarrassing problem out, that he did commit to the $150,000 and that he was going to have another meeting with Fred Lyons to straighten this mess out.

I didn't see him or talk to him for a day or two later.

He then called me up from Jersey, told me that there were checks coming in on Leone's account, he didn't want to have any more problems with Leone and would I draw money out of the Gramercy account to deposit into Ficarra's account.

I told him I didn't have $68,000 or $75,000 to put into his account.

He said, "Well, don't worry about it, when I got back to the bank, I will make an advance, the account will be straightened out. Just make sure the deposit is made today, because if the funds come in against insufficient funds, they are going to bounce, but if they come in against uncollected funds, they will be covered."

I gave an instruction to Annette, my secretary, to make out a check for the difference, which was $68,000, because there was a fee due to me, I wanted to get it now because all I was doing was getting a lot of heartache and no money, and I told Leone I was taking the money and I notified LeVien and I made sure the deposit was made that day.

I thought it was made in Mineola. Apparently it was made in the City by John Duncan.

Then the following day the $75,000 check came out to Annette, my secretary, who deposited it into the Gramercy account.

Q Did you have any knowledge of the source of the funds of that $75,000 check?

A I assumed the source of the funds was--

THE COURT: No.

Did you have any knowledge?

We do not want to know what you assume, what you guessed or what you thought might be the case. We would like to know what you knew.

Just tell us that.

A No.

Q Did you know then that it was drawn against the Chempar Chemical account?

A No, I did not.

Q Did there come a time when you met with an individual by the name of Karl Koch III?

A Yes, sir.

Q When did that take place? When did you first meet him?

A I don't remember the exact date, but I heard his testimony today. It was probably around November of that particular year.

Q What was the purpose of your meeting with Koch or Mr. Koch meeting with you?

A John Byrnes, his accountant, was a friend of mine and also a business associate, and he recommended Karl Koch to me with the idea that possibly I could help him with a tax shelter.

Q Did you do anything toward that end?

A Yes.

Well, no--yes and no.

Yes, I tried to introduce him to a number of real estate tax shelters and, yes, I did introduce him to a group that had these movie picture tax shelters, which I don't particularly care for and I didn't recommend them and, yes, I did introduce him to Howard Garfinkle for the purpose of a tax shelter as well, Arthur Padula and to Island Realty, which is a Long Island firm, to discuss and look at several buildings and tax losses and whatever to shelter the money that he received from the sale of his business.

I also tried to seek what they call a "prudent tax shelter" for his father, because his father was the ward of the estate because he was declared incompetent by his--

MR. REILLY: I will object and move to strike as irrelevant and hearsay.

THE COURT: Strike it.

THE WITNESS: That wasn't hearsay, that is true.

THE COURT: It may be true so far as you say, but until competent evidence is introduced I cannot permit it to be considred by the jury.

THE WITNESS: I'm sorry.

Q Do you recollect the meeting that took place at Gatsby's Restaurant on December 4th, 1974?

A The date I don't know exactly, but I do remember the meeting, bringing Karl Koch to Gatsby's, yes.

Q What time of day did this meeting take place?

A It was during a lunch--during lunchtime.

Q When on that day did you first meet with Karl Koch?

A Oh, I met Karl Koch that morning.

Q About what time?

A I guess about 8:00, 8:30 at Coco's Restaurant out in Smithtown.

Q Where did you both go from there?

A I went to my office after we had breakfast and Karl Koch and Joe Sherry, who was his partner at the time, left and they were going to meet me in Mineola and then from there we all went to Gatsby's Restaurant for lunch.

Q Sometime during the course of the meeting, do you recall Mr. Koch leaving Gatsby's Restaurant?

A I mean, you know, it was a while back and--I remember there was a discussion that he was leaving or whatever. I think he wanted to go to the bank at that time, which I offered to take him over to, and he said "No."

He did leave and Joe Sherry and--I don't know who else. I guess Judd Feinerman and I stayed at the restaurant when Karl Koch left.

Q Before Mr. Koch left the restaurant, did you have any knowledge that he was going to purchase or deposit a check into the Manufacturers Hanover Trust Company on that date in the amount of $255,000?

THE COURT: A certificate of deposit?

I think you said "purchase a check."

MR. WEINBERG: No. I meant deposit a check for the purpose of purchasing a certificate of deposit.

THE COURT: I did not hear you.

Perhaps you can rephrase the question from its beginning.

MR. WEINBERG: I am sorry.

Q Before Mr. Koch left the restaurant, did you have any knowledge that he had intended to go to the Manufacturers Hanover Bank and deposit a check that he had in his possession in the sum of $255,000 for the purpose of purchasing a certificate of deposit from the Manufacturers Hanover Trust Company?

A No, sir, I did not.

Q Did he ever discuss with you beforehand purchasing a certificate of deposit?

A Karl Koch spoke of his relationship with Security National Bank, which he wasn't happy with because of the controversy about security at the time. But he talked about his money in reference to a trust department-type of relationship and he may have talked about a banking relationship, but it was of a trust-type nature, not a conventional-banking nature.

That was my suggestion, that he establish a banking relationship for himself.

Q Mr. Ebbecke, you were in the courtroom when Mr. LeVien testified that there was a check drawn on Alpha Scaffolding in the sum of $2,000 which was cashed and the money paid over to you.

Did you ever receive any of that money?

A No, sir.

Q Do you know anything about that check?

A No, sir.

Q Was Alpha Scaffolding one of your accounts?

A Yes, sir.

Q Did you bring them into the Manufacturers Hanover Bank?

A No, I did not.

Q Were they in the bank--

A I brought them back later on, but, no, they introduced Jack Kitson to me.

Q When you say "they," whom do you mean?

A Frank LeVien introduced Jack Kitson to me.

Q Did you do any work on behalf of Alpha Scaffolding with respect to obtaining financing for them?

A Yes, I did.

Q What was the nature of this work?

A Well, at the time Jack Kitson's financial statement showed a deficit net worth or the Alpha Scaffolding and Equipment showed a deficit net worth because the way the accountant presented the financial statement; he accelerated depreciation to the extent that it ate up the assets on the balance sheet to show a deficit.

I discussed that with his accountant and suggested that he turn the depreciation end of it over a 20-year life span rather than accelerating the depreciation for presentation purposes, which is a completely above-board type of transaction, and also evaluated the financial statement and suggested to the accountant that he reflect the saleable inventory not as equipment as such but to show it above the line on the financial statement to improve the working capital position of Alpha Scaffolding Equipment.

I then had the accountant do that.

I then discussed a short-term loan with Edward Merz, who was the president of the State Bank of Long Island, to consider a $30,000 loan.

Ultimately, Kitson's firm wanted a long-term loan to pay off their major supplier who supplied the scaffolding equipment which was the main, you know, tool of that particular firm, and prior to getting the SBA commitment from State Bank, I went to Ohio and met with Wilbur Weiss, who was the president of Buildjay, and discussed a sizeable reduction in the trade that was there if, in fact, we paid off in cash, you know, a major portion of that obligation.

I told Frank LeVien, because he introduced the account to me, what was going on, and he suggested that I bring the whole package back to him and let him make an evaluation and possibly he would entertain a loan.

He did, and we talked about a $30,000 loan, and initially it turned out to be a $70,000 loan, which was good for Jack Kitson. But he didn't want me to tell his two partners that he got $70,000, because he was afraid his two partners would sit back and not collect the receivables.

MR. REILLY: I object and move to strike.

THE COURT: Sustained. Strike what Jack Kitson told the witness.

The jury will disregard that portion of the witness' answer.

Q Are you aware that the Manufacturers Hanover Bank had granted a $70,000 loan to Alpha Scaffolding?

A Yes.

Q When did this loan take place, do you remember?

A No, I don't remember the date.

It could be September, October--

THE COURT: You do not know?

THE WITNESS: No.

THE COURT: And now you are guessing, is that right?

THE WITNESS: That's all I was doing, yes.

THE COURT: I cannot permit guessing.

If the witness knows with a reasonable degree of certainty I will permit him to answer, but if he does not, I cannot allow speculation.

Q Do you know whether or not, of your own knowledge, all of this money went into the Alpha account?

A Do I know of my own knowledge?

Q Yes.

A I won't answer that, because I assumed it all went--to my knowledge, it went into his account.

MR. REILLY: Objection; move to strike, non-responsive.

THE COURT: Let me ask another question.

Did you ever examine his statements?

THE WITNESS: No, sir.

THE COURT: Do you have any direct knowledge that it went into his account?

THE WITNESS: Other than a notification he showed me he got from the bank--

THE COURT: A notification he showed you?

THE WITNESS: Yes.

THE COURT: I suggest that would be the best evidence, if there is such a notification, or some bank record.

I cannot permit the witness to testify on this matter, either.

I will have to strike that portion of his testimony which relates to what happened to the $70,000 which the witness has testified was loaned by Manufacturers to Alpha.

Q Mr. Ebbecke, did you ever tell Mr. LeVien that he could draw against any portion of that money for his own purposes?

A No, sir.

Q Did you ever discuss with Mr. LeVien the drawing against that money for his own purposes?

A No, sir.

Q Mr. Ebbecke, you heard Mr. LeVien testify about a check in the sum of $1,500 which was drawn on the Manufacturers Hanover Trust Company payable to Gramercy Capital Corporation or Ltd.?

A Right.

Q Do you recollect the circumstances surrounding that check?

A Yes.

I was with Frank LeVien and I told him that I was in arrears with that $10,000 loan and I was a little tight and would he lend me $1,500, and he said "Yes."

Q Was it your understanding that this was a personal loan from Mr. LeVien to you?

A Yes, yes.

Q Did you know at that time the source of those funds?

A No, sir, I did not.

Q Mr. Ebbecke, did Mr. LeVien tell you at any time that he was personally using moneys on deposit at the Manufacturers Hanover Trust Company?

A No.

Q Did you at any time ever have any sort of an agreement with Mr. LeVien to bring accounts into the bank so that Mr. LeVien could apply the money that was loaned to these accounts to his own personal use?

A No, sir.

Q Did you ever at any time have any prior knowledge of Mr. LeVien's misapplication of any moneys on deposit at the bank?

A Did you say "prior knowledge"?

A Prior knowledge.

A No.

Q Did you ever knowingly do anything to assist Mr. LeVien in any way misapplying any funds which were on deposit at the bank?

A No.

Q When did you learn for the first time that Mr. LeVien had stolen or misapplied any moneys?

A Sometime right after Christmas.

THE COURT: Of what year?

THE WITNESS: Of 1974.

Q How did that come to your attention?

A Joe Sherry--I took off that time--Joe Sherry, who was Karl Koch's partner, called me up and told me that Frank LeVien was on vacation--

MR. REILLY: Object, move to strike.

THE COURT: Strike it.

The jury will disregard the last portion of what Joe Sherry said to Mr. Ebbecke.

That would be hearsay, inadmissible and inappropriate and, therefore, I have directed the jury to disregard it.

Q But the first time you became aware that there was any impropriety at the bank involving Mr. LeVien was when?

A Sometime after Christmas 1974.

MR. WEINBERG: I have no further questions at this time.

THE COURT: Very well.

MR. REILLY: May I have a few moments, your Honor?

THE COURT: Oh, yes, we are going to take a recess. Just give me a moment.

(Pause.)

THE COURT: Ladies and gentlemen, we will take our mid-afternoon recess at this time of approximately ten minutes.

Please do not discuss the case among yourselves, keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

The jury is excused for a ten-minute recess. We will then continue until approximately 4:30.

(Recess.)

(In open court, jury present.)

THE COURT: You may proceed, Mr. Reilly.

CROSS EXAMINATION

BY MR. REILLY:

Q Mr. Ebbecke, you were a loan officer with several banks, is that correct?

A Yes, sir.

Q You had extensive experience in making loans to commercial lenders, is that correct?

A Yes, sir.

Q And in addition, you have testified that you had experience as a loan administrator, is that correct?

A That's correct.

Q And as somebody who has obligations or duties with respect to loan administration, you have become familiar with the various paperwork that accompanies any loan by the bank or any extension of credit by the bank, is that correct?

A Well, each bank has a different procedure, but generally, yes.

Q At each bank that you were associated with, is it true that whenever a loan was made or whenever an extension of credit was made, there was always some paper that would evidence that extension of credit or that loan?

A In a bank? Yes, sir.

Q If a loan was made, the person to whom the loan was made would sign a note before the bank would part with any funds, is that correct?

A Unless it was a revolving credit agreement where the balance would go up and down, generally, yes.

Q And if it was a revolving credit agreement, that company or that lender would have established a particular line of credit, is that correct?

A That's correct, sir.

Q And this came off exhaustive analysis of that company's position and reliability to meet its debts, is that correct?

A Generally, yes.

Q Were you familiar--well, tell me this:

When you were with the Long Island Trust Company, what salary did you make as a loan officer?

A I believe it was about $15,000 a year.

Q And you were the assistant vice president in charge of loan administration, were you not?

A That's correct.

Q When you were with the Security National Bank, what was your salary there?

A About $12,000.

Q When you were with Irving Trust, again, in loan administration, what was your salary there?

A About $10,000.

Q And were you familiar, generally, with the range of salaries earned by lending officers in the bank in the New York area?

A Well, they vary, but not specifically, no. I mean, each one, based upon their responsibility, apparently, we got more money.

Q Was Frank LeVien a major bank officer with the Manufacturers Hanover Trust Company?

A No.

Q You referred to him as a development loan maker, is that correct?

A Initially, yes.

Q He was a young--

A That's right.

Q --man in the lending business.

At the time you knew him, he was assistant secretary of the bank, is that correct?

A I believe that was his title, yes.

Q And that is not one of the higher positions in the bank, is that correct?

A That's right.

Q At that time you did not expect that he was making a great deal of money, did you?

A I never discussed his salary, but I would assume it was about fifteen, sixteen thousand dollars.

Q And that may be a lot and it is, indeed, a lot, but vis-a-vis the figures you were dealing with, that was not an overwhelming amount of money for a man who had a family and--

A No, it was not.

Q --others to support?

I am going to show you Government's Exhibit No. 40, the $75,000 check that you received (handing).

A Right.

Q That was deposited in Mineola, wasn't it?

A I'm not sure. I thought it was deposited in Mineola, yes.

Q Is that your endorsement on the back?

A No.

Q Do you recognize whose endorsement it would be?

A I'm not--I don't recognize the handwriting, but I assume it was Annette, my secretary.

Q When you received the $75,000 check or when Annette received it, it was deposited in the Gramercy Capital account, is that correct?

A That's right.

Q At that time, did Manufacturers Hanover Trust Company owe Gramercy Capital $75,000?

A No.

Q At that time, did you or anyone authorized by Gramercy Capital sign a note evidencing an obligation to pay Manufacturers Hanover Trust Company $75,000?

A No, sir.

Q There was then, as far as Gramercy Capital was concerned, no evidence of this transaction whatsoever vis-a-vis its obligation to the Manufacturers Hanover Trust Company, is that correct?

A Gramercy Capital had no obligations to Manufacturers Hanover Trust Company.

Q Yet it received $75,000 without any such evidence of obligation?

A No. It received $75,000 by way of Frank Leone.

Q Excuse me.

From whom did you receive that check? From whom did Gramercy Capital receive that check?

A I believe Annette said John Duncan delivered the check out--no, wait a minute, it was Frank Leone's uncle who delivered that check out.

Q Were you present?

A No. That's what Annette told me.

MR. REILLY: I move to strike that.

THE COURT: Strike it.

The jury will disregard it.

Q On that occasion, Gramercy Capital, through your secretary, wrote a check for $68,000 to Ficarra, is that correct?

A Prior to that check being delivered to us, yes.

Q Is that the same date?

A No. They are two different dates.

Q What is the date of that check?

A September the 13th.

Q And this check, $68,000, was on what date? What is it dated?

A Gee, I can't--could I?

THE COURT: Let me see.

(Handed to the court.)

THE COURT: I think you can tell.

A It looks like--it does look like the 18th or the 12th or whatever.

I don't know, but I'm sure I can get an original copy of that.

Q Let me show you Government's Exhibit No. 32 in evidence.

This is the monthly statement for Ficarra Furniture (handing).

If a zero delay was authorized in connection with a $68,000 deposit, what date would be reflected on the monthly statement?

A Well, a zero delay wouldn't have anything to do with the deposit.

Q Does that statement reflect the date upon which the check of $68,000 was deposited?

A On the 13th.

Q And is that not the 13th of September?

A That's correct.

Q You stated on your examination that Frank Leone had said at this meeting at which you attended that he did not get his $150,000 line of credit, is that correct?

A He didn't get the full balance of the money that he was supposed to get, that's correct.

Q He did not get the full balance, but you knew he got $90,000, is that right?

A That I knew he had.

Q So you knew the figure was $60,000, is that right?

A Well, time, I guess, was $60,000.

Q Can you please tell us why you wrote out a check for $68,000 to be deposited to Ficarra Furniture?

A I was supposed to write a check out for $75,000 based upon Frank LeVien's request, and because I didn't get my full fee, I wrote the check out for $68,000.

Q Frank LeVien then asked you, you are saying, to deposit a check for $75,000, not $60,000, is that correct?

A He told me to write a check out for $75,000.

Q Didn't you ask Frank LeVien, "What's going on here? I thought it was only a difference of $60,000 between 90 and $150,000"?

A There were differentials in discussions about the account that he had that day. I don't know exactly what the transactions were. But he told me to write a check out for $75,000 which would make up the difference of $150,000.

Q You did not write out the check for $75,000, you chose to write out a check for 68?

A That's correct.

Q Even under that explanation.

Did Frank Leone tell you to write out a check for 68?

A No. Frank Leone says, "As long as my money gets into my account, that's all I care about."

Q So he did not know whether you were supposed to write out a check for 75, 68 or 60, according to your testimony?

A He said that he wanted the full balance what was committed to him, which was the $150,000 loan, and he wanted it in his account.

I told him then that I was taking my fee.

Q When did you tell him this?

A I told him over the phone.

Q Did you hear Frank Leone testify this morning?

A Yes, I did.

Q He testified tht he paid you $2,500 for your part in obtaining this loan, is that correct?

A Frank Leone did not pay me $2,500 for obtaining that loan, Frank Leone gave me a $2,500 retainer deposit.

Q Did Frank Leone pay you $2,500 by way of check when you--

A I don't remember exactly, but if he said he did, I'm sure he did and if I have a record of it, I'll check it out. I don't know for sure.

Q Did you hear Frank Leone state that that was the limit and extent of his obligation to you for your work in obtaining the loan from the Manufacturers Hanover Trust Company?

A Yes, I heard what he said.

Q And now will you please tell us why you took out the additional moneys from the $75,000 check?

A Because my original arrangement with Frank Leone was for seven points, I believe, and he agreed with me, and when there was a lot of controversy I almost lost my fee completely, and then when I knew the money was coming in the account, I discussed it with him and now he denies it.

I might say a lot of people are denying it because it's--I'm not conjecturing, but it is a matter of a civil situation rather than a criminal situation.

MR. REILLY: I move to strike.

THE COURT: Strike it.

After "a lot of people are denying it," the jury will disregard the rest of that answer.

Q I am showing you a check--

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xxx

MR. REILLY: I am going to mark this as Government's Exhibit 74 for identification.

(Check dated September 5 to Gramercy Capital, Ltd. in the amount of $2,500 was marked Government's Exhibit 74 for identification, this date.)

Q Is that the check that Frank Leone paid you? Did he write that check out to you? (Handing.)

A I don't understand--I don't know--the handwriting is very illegible. I don't know. There is no corporate name or anything on there.

Q This is a check to Gramercy Capital, Ltd. on September 5 for $2,500?

A Yes, it is.

Q Have you seen Frank Leone sign his checks?

A No, I'm not that familiar with his signature, no, I'm not, sir.

Q Do you remember receiving this check for $2,500?

A As I said, no.

Q That was deposited, was it not, in the Gramercy Capital account?

A If it was payable to Gramercy, I'm sure it was deposited.

Q You have no idea where it came from?

A I didn't say that. I said I don't know Frank Leone's signature.

Q Do you have any idea where this check came from?

A If you say it came from Frank Leone, I'll go along with that.

I don't know the signature, though.

Q Do you remember receiving a check for $2,500 from Frank Leone or from his company, Ficarra, for the work that you performed?

A Not--you know, it was a while back. No, I don't really remember it, no, sir.

MR. REILLY: I am going to offer in evidence Government's Exhibit 74.

MR. WEINBERG: I am going to object to this being introduced in evidence, your Honor.

THE COURT: Sustained.

THE WITNESS: What does that mean?

THE COURT: That means it is not received.

Q Did you make a $10,000 loan from Judd Feinerman?

A I borrowed $10,000 from Judd Feinerman, yes.

Q When you borrowed $10,000 from Judd Feinerman, Mr. Feinerman was very careful to draw up a note which evidenced your obligation to pay him, is that correct?

A That's correct.

Q There was a transfer of a significant amount of money?

A Yes, sir.

Q And Exhibit 66 in evidence, that is the note that he asked you to sign when he made that transfer of funds to you, is that correct?

A That's correct.

Q Mr. LeVien was so good as to sign as a guarantor on this?

A That's correct.

Q In fact, he is a co-signer on the note, is that correct?

A Yes, sir.

Q For $10,000.

Did Mr. LeVien ever tell you that he had come into a large independent source of income?

A Yes,sir, he did.

Q All right. What did he say?

A He was dealing with Chempar Chemical and that he was probably in the very near future going to leave Manufacturers Hanover to head up as president a Chempar Chemical capital company and that he would have full discretion to make loans from the fund which was initially going to be capitalized, I believe, between a million and two million dollars.

He additionally told me that Chempar Chemical or Irrigation Development, whatever, was putting a life insurance policy on his life because they would consider him the key man to run this particular organization.

Q At this time, was Mr. LeVien employed by the Manufacturers Hanover Trust Company?

A Yes, he was.

Q And to your knowledge, he was not employed by Chempar Chemical, is that correct?

A Well, he may not have been involved, employed. I mean, he was working--

Q Yes or no?

A He was working as a consultant to Chempar Chemical, that I do know.

Q And you know this--did he ever go to Chempar Chemical Company? Did he ever leave Manufacturers Hanover Trust Company?

A You mean leave permanently?

Q Yes.

A Not to my knowledge, no.

Q So the extent of your knowledge that Mr. LeVien was going to come into a great deal of money was that he might get a job in a very big company, is that correct?

A It's not my--

Q He said he was going to get that job?

A He was going to take over the fund, but he was, in fact, working as a consultant for Chempar Chemical, and that insurance policy was in effect during that period of time.

Q You worked for these various banks that you mentioned before.

Do you know whether it is the policy of any of those banks to allow loan officers who work fulltime for those banks to act as consultants on the side for a major--

A You can act as a consultant--

Q --for a major credit account in the bank?

A It's irregular, but you can do it if you notify the bank and get their permission.

You also can become a director of a company if you get permission, because I was a director of a company when I worked for a bank, and I got permission from the bank to do that.

Q And what was your compensation acting as a director of a company?

A At that time, I believe I got $500 a meeting as a director, and there were other compensations I received as a consultant for them, which I disclosed to the bank.

Q Mr. Ebbecke, you issued a check to Judd Feinerman that came due that bounced, is that correct?

A That's correct.

Q You did not have sufficient funds in the Gramercy capital account to cover?

A I thought that I was getting the $10,000 from Frank LeVien vis-a-vis Mr. Lettieri and that didn't happen when I drew the checks.

Q You thought you were getting the funds?

A That's correct.

Q Had you bothered to notify Mr. Lettieri about this?

A Mr. Lettieri owed me my fee by way of-- unfortunately, I don't have the document, but it was a fee that he owed me for the $150,000 loan that he received from Manufacturers Hanover.

Q That was what you call a "bridge loan," was it not?

A It was initially supposed to be a bridge loan, and the New York Business Development came to Manufacturers and also to Cellini Furniture of Brooklyn to review the operation and they were going to go along with a five-year, as a matter of fact, had approved a five-year term loan in conjunction with Manufacturers Hanover.

Q Your arrangement with Mr. Lettieri was on a percentage of the principal large loan with Manufacturers Hanover Trust Company, is that correct?

A The initial retainer agreement was based upon-- yes, that's right.

Q And he also paid you $1,500, did he not, when you started to do business for him?

A Yes. But I had to travel to Florida, see Cellini in Miami and I met with Trifoil--

Q Just answer the question yes or no, please.

A I'm sorry.

Q Did there come a time when you called Mr. Judd Feinerman and told him that you had a check that you had gotten from the bank?

A Yes.

Q And this is the check, Government's Exhibit No. 11, isn't that correct?

A Yes, I would say so.

Q And you picked thatup directly at the bank?

A No. Frank LeVien--at that time I didn't go to the Manufacturers that often. Frank LeVien came over to Gatsby, and I called Judd Feinerman from Gatsby's Restaurant.

Q Did you sign a note or did you sign any acknowledgement of receipt of this $10,000 when that was given to you by Frank LeVien?

A I gave Frank Lettieri, I believe--Annette sent Frank Lettieri an acknowledgement of receipt of payment against the retainer.

Q You believe so?

A I believe--when I get my records--I can bring them in tomorrow and show them to you, sir.

Q You do not have them with you now?

A No. I didn't think I would testify today.

Q Did there come a time when you told Mr. Lettieri that you had deducted $10,000 from his account?

A Mr. Lettieri knew of the transaction by way of Frank LeVien, yes.

Q Oh, is this because Frank LeVien told you that?

A Yes, sir.

Q You did not go and announce to Mr. Lettieri, "I wish to deduct $10,000 and would you advance that from your account"? You didn't do that?

A I took Mr. Lettieri to State Bank of Long Island to meet Ed Merz and I discussed that $10,000 fee with Frank Lettieri at the time, and he said, "Well, my account is straightened out, you'll get your fee, John."

Q And your fee--when he said "your fee," he was talking about the major loan with the Manufacturers Hanover Trust Company, not this bridge loan?

A No. The major loan that was ultimately going to be made that was all set up was the loan that was going to be granted by State Bank of Long Island, not Manufacturers any longer.

Q And if it had been granted, you would get your fee, is that correct?

A I would have gotten an additional fee, yes, sir.

Q An additional fee.

The $10,000 apparently would be part of that additional fee?

A The $10,000 would have been part of the additional fee, that's correct.

Q And you were not entitled to that fee until you actually obtained the loan that you were just discussing?

A I did obtain a loan for Mr. Lettieri up to $150,000.

Q You are again referring to that $150,000 loan at the Manufacturers?

A At Manufacturers Hanover, yes, sir.

Q You obtained a $25,000 loan for Mr. Andy Nesbit, didn't you?

A Yes, I did. Well, yes, I introduced Andy.

Q You did not charge him--that was a bridge loan, wasn't it, while he was hopeful--

A Andy Nesbit's situation was a little different. I was personally involved with Andy Nesbit.

Q You did not charge him a fee for that loan, did you?

A Andy Nesbit, I didn't charge him a fee, but he repaid part of my obligation that he owed to me. I think it was about $4,000 from that loan.

Q Let me show you this check for $15,000 drawn on the Alpha account.

You were aware that taht check was being drawn at or about the time it was deposited in your account, were you not?

A Yes, Jack Kitson--

Q December 6.

A I don't know--it is December the 9th.

Q Did he say the 9th? All right.

THE COURT: Would you identify it by an exhibit number, counsel.

MR. REILLY: Yes. That is Exhibit No. 60.

Q That is your secretary's writing, isn't it? Did you direct her to fill in--

THE COURT: He did not answer the question. Is that your secretary's writing?

THE WITNESS: She testified that it was her signature, so I assumed it was.

Q Do you recognize it?

A I don't know Annette's handwriting as such, no.

Q Did you direct her to write out "Gramercy Capital, Ltd., $15,000"?

A She indicated John Duncan told her that. I must have given him the instruction to do that, yes.

Q And at that time had you advised Jack Kitson that you were taking $15,000 from the Alpha account?

A Jack Kitson gave me that check.

Q He gave you that check?

A Yes.

Q But it did not contain a single word on it other than his signature, isn't that correct?

A No, we discussed the amount and he said if he thought his account was straightened out and he realized that he owed me the $15,000 for what I did do for him and that part of my retainer agreement--whether you take the money down or what, in other words, if you get the total commitment, which he did get, and he got a letter of acknowledgement from the major supplier, that he acknowledged that I was due the money.

However, he felt that he was having difficult with his account with Mr. LeVien and when he was assured that that was straightened out, I would get my money.

There was a bit of an argument about it, but he did give me the check.

Q Did he tell you to write "$15,000" on that check and write it out to the name "Gramercy Capital, Ltd."?

A If I--I'm sure he did, yes.

Q Why didn't he take the trouble to write it himself?

A Because there was a dispute about how much money he had available. I wanted to get some part payment because I was hanging for a long time working with Jack Kitson.

Q Jack Kitson testified here that you had been successful in reducing the obligation with the Manufacturers, but it was totally contingent upon you, John Ebbecke, obtaining the financing to pay the manufacturers,

Is that your understanding?

A I did--yes, correct. But I did also get the financing set up for him.

Q And did you get an actual--did the financing come through?

A They chose not to take it down, "they" meaning he and his partners chose not to take it down.

Q And from whom was this manufacturing--from whom was this commitment?

A State Bank of Long Island.

Q Do you have any documents in support of that?

A No. But I am hoping--I intended to bring in Mr. Merz, who is the president--who was the president of State Bank of Long Island.

MR. REILLY: Objection.

THE COURT: Sustained.

MR. REILLY: Objection and move to strike.

THE COURT: Strike it.

Q By October 31, Mr. LeVien was still at the bank, is that correct?

A In October? Yes, I believe so.

Q And he wasn't working with Chempar Chemical, was he?

A I was--no. He was working with Chempar Chemical at the time he was working with the bank.

Q On October 31, was he working with Chempar Chemical, to your knowledge?

A Yes, he was working for Chempar Chemicals, to my knowledge.

Q Your testimony was that you asked him to lend you $1,500, is that correct?

A That's correct.

Q Did you sign a note for Frank LeVien as Mr. Judd Feinerman had required that you sign a note for him when you lent him the money?

A No.

Q You just got $1,500?

A That's correct.

Q And as it turned out, you needed exactly $1,500 that day in your banking account, you were just about $1,500 overdrawn on the final date of the month, is that right?

A I imagine that's why I asked to borrow the $1,500.

Q And the zero delay actually allowed your statement to come out almost even, is that correct?

A You use the zero delay. It is not unusual for a bank to give immediate credit against an official check.

Q That is correct. And that is what you asked Mr. LeVien to provide you, an official check, is that right?

A Yes, sir.

Q And doesn't your statement indicate exactly what I said, that you were able to close your account on the 31st as barely $15 or so overdrawn?

A My balance was $157, the checks were $730, it gave me an $86 balance.

Q $86 overdrawn balance?

A That's right.

It wasn't overdrawn, that was a plus balance.

Q Take a careful look.

Does that say "OD" at the end?

A I'm sorry, it does.

Q And had you not gotten that $1,500, you would have been well over $1,500 overdrawn, isn't that correct?

A That's right.

Q Do you know an individual named Lester Wadsworth?

A Yes, I do.

Q And did you ever ask Lester Wadsworth to validate a totally fictitous letter of credit?

MR. WEINSTEIN: Objection, your Honor.

THE COURT: Sustained as to the form.

Q Did you ever prepare a totally fictitious letter of credit made out to Summit Insurance Company of New York in connection with an arrangement with one David Kaplan?

MR. WEINBERG: I am going to object to that, also, your Honor.

THE COURT: Sustained as to form.

"Totally fictitious."

Q Do you know a person named David Kaplan?

A I met him, yes.

Q And were you working on an arrangement, a financing arrangement for him in March of 1974?

A A financing arrangement?

No, not as such, no, sir.

Q Were you associated in a company called Oaks-Darby, Ltd. with one James Feeney?

A I was associated with Jim Feeney, yes, sir.

Q In that company?

A No, I wasn't--part of the company. I was associated with Mr. Feeney. Oaks-Darby worked out of my office.

Q You were not part of Oaks-Darby, is that correct?

A I was not an officer of Oaks-Darby, no, sir.

Q You were not?

A No.

Q You are quite certain you were not an officer of Oaks-Darby?

A No. I didn't sign anything. I had no right to draw any checks or anything like that.

Q Did you ever sign yourself as the executive vice president of Oaks-Darby?

A Yes, I did.

Q Can you explain if you were not the executive vice president of Oaks-Darby why you would sign a letter to that effect?

A The executive vice president was merely a title that Mr. Feeney gave me, but I had no signing authority on the Oaks-Darby account as such.

Q Did you work with Mr. Feeney of Oaks-Darby in obtaining financing for Mr. Kaplan and the National Motorcylce Plan, Inc.?

A There was an arrangement that Mr. Kaplan and his attorney came to our office and discussed a standby letter of commitment that he needed for a proposed acquisition, as I remember it, of another insurance company, which he did get from the Hempstead Bank.

Q And was that standby letter of commitment something on the order of $500,000.

A To be honest with you, I don't remember the amount. I thought it was $750,000, but--

Q Who issued that standby letter of credit at the Hempstead Bank? Someone you knew?

A Signed by Mr. Wadsworth.

Q Mr. Wadsworth, what was his title at the bank?

A I believe he was manager.

Q He was manager of the Mineaola office, which was right in the building where you are located?

A That's right, yes.

Q And, to your konwledge, did Mr. Lester Wadsworth, as manager of the bank, have authority to sign a standby letter of commitment of $750,000 or $500,000?

A No. I believe he exceeded his authority. But I believe he discussed that with his superior, Mr. Bauers, or whatever.

MR. REILLY: Object and move to strike.

A I don't know for a fact.

THE COURT: All right. If you do not know for a fact, I will strike that portion of, "I believe he discussed that with," and what followed.

MR. WEINBERG: If your Honor please, at this time I would like to raise an objectionto this entire line of questioning as improper cross examination.

MR. REILLY: Your Honor, this goes to his credibility.

THE COURT: If it is directed to credibility, I do afford counsel latitude on cross examination.

MR. WEINBERG: If we can have a representation from Mr. Reilly that it is directed solely toward credibility.

MR. REILLY: Your Honor, that is where I am proceeding.

THE COURT: All right. He has so represented.

MR. WEINBERG: Thank you.

Q Did Mr. Kaplan come to your office or talk to you on the telephone and explain to you that he was having difficulty with that letter of commitment?

A No, not with the letter of commitment, no, sir.

Q Was a letter of credit issued by Mr. Wadsworth, to your knowledge, to Mr. Kaplan or for Mr. Kaplan?

A No, no.

There was a proposed letter of credit to be issued on behalf of National Motorcycles, Inc., which was to substitute cash collateral that I believe Mr. Kaplan had at the First National City Bank.

But the letter--proposed letter of credit never was issued or approved by the Hempstead Bank.

Q And was the proposed letter of credit that you mentioned, was this something that you had a hand in typing?

A Did I type it myself, you mean?

Q Did you direct or did you know that somebody under your direction was typing it?

A If the proposed--well, if the proposed letter of credit was typed, it would have been typed in my office, yes.

Q Let me show you Exhibit No. 75 for identification.

Would you just examine that photocopy? (Handing.)

Is this what you described as the "proposed letter of credit" issued on behalf or for Mr. Kaplan?

A This is--this looks like a regular letter of credit on the stationery. I mean, you know, she fills in amounts and shows numbers.

Q That is not a proposed--nowhere on there does it say "sample" or "proposal."

A It doesn't say "sample," no.

Q Is that on the letterhead of Lester Wadsworth?

A Yes, it is.

Q And to your knowledge, was Lester Wadsworth authorized to issue letters of credit in the amount of $200,000?

A I'm sure he was authorized to issue letters of credit. As to what his line of credit was, I don't honestly know at this time. I think it was a lot lower than that. But he was authorized if he was given permission by the board or whatever, yes.

Q Did you have occasion to call Lester Wadsworth on the telephone at or about March 29, after the date of that letter?

A Did I call Mr. Wadsworth about--

Q Yes. Did you telephone him and ask him to come to the Caucus Restaurant to meet Mr. David Kaplan?

A No. There was a big to-do about Mr. Kaplan.

Mr. Kaplan was very upset with relationship to, not this proposed letter of credit, which was never issued, he was more upset about the letter of intent that he realized was of no value and he paid for something that he never received and he was kind of upset, to say the least, about it, yes.

Q Did he pay you something for which he received no value?

A He gave a check to Oaks-Darby.

Q In the amount of $10,000?

A Yes, sir, I believe so.

Q And had you worked with Mr. Feeney in setting up that proposal or that commitment?

A Yes, I did. Yes, I did.

Q Did Mr. Feeney give you any money from that check?

A I think Jim Feeney give me $2,500. I'm not sure.

Q To your knowledge, did Mr. Wadsworth come to meet you as you requested in the Caucus Restaurant?

A You said I requested.

Q I am asking you whether you did request him.

Did you request that he come in and meet Kaplan because Kaplan did not even know whether Lester Wadsworth existed?

A I don't remember calling Lester Wadsworth to meet Mr. Kaplan, but I remember Mr. Kaplan being very upset about Lester Wadsworth.

Q Do you remember having a telephone conversation with Lester Wadsworth saying you were very upset that he did not come to the restaurant to meet Mr. Kaplan?

A No, sir.

Q Do you remember telling Mr. Wadsworth that he could just forget about his obligation to pay you $2,400 on a loan for an automobile that you had made to him some months before if he would come and meet Mr. Kaplan?

A No, sir.

As a matter of fact--

Q Yes or no?

A No, sir, I did not tell him that.

Q You did not tell him that?

A No, I did not.

Q Do you recall any conversation of that sort?

A With regards to what?

Q First of all, did you lend Wadsworth $2,400 so he could buy a car?

A I lent him $2,700.

Q And you did not charge any interest, did you?

A No, I did not.

Q And that was several months before March 29?

A I don't remember the date, but I have records of it, because my lawyer sent a demand letter to Mr. Wadsworth requesting that he make payment. But, unfortunately, Wadsworth was having financial problems of his own and I didn't want to press him until he cleared himself up.

But there was a demand by my attorneys put on Mr. Wadsworth for the recovery of that money.

Q And when did that demand take place? Wasn't it in 1975, in August of 1975?

A I believe it was--the demand was placed on him when he did secure a job at a hospital and I knew he was making money to pay me back and I needed the money and I asked--

Q This is over a year-and-a-half later, isn't it?

A About a year. Not quite a year. About eight months. And it was more than one letter sent to him.

Q Do you recall telephoning Mr. Wadsworth while he was at the bank one afternoon and asking him to come up to your office to meet Mr. Kaplan and to discuss a letter of credit issued by Hempstead Bank?

A No.

What happened is that I wasn't--I think I was down at the Caucus and Mr. Feeney asked Mr. Wadsworth to come up to meet Mr. Kaplan and another associate of his to discuss the situation as to the letter of credit and as to the original standby letter that Mr. Kaplan got, and at that time Mr. Wadsworth indicated that he overstepped his authority and he acknowledged that the letter was issued by him but he couldn't be validated, and I believe Mr. Kaplan's associate had Mr. Wadsworth initial that particular letter indicating it was his, and because of the whole to-do, Mr. Feeney, at least told me, that he went to Mr. Kaplan and returned what moneys that Mr. Kaplan advanced for that particular instrument.

There was no money ever advanced for this particular instrument.

Q Is that the signature or the initial that you are referring to and is that the witness?

A I don't know Mr. Wadsworth's signature if I fell over it.

I assume--I just know what transpired.

Q Doesn't this letter contain a forgery of Mr. Wadsworth's signature?

A I have no idea. I doubt it. Not of--I doubt Mr. Wadsworth would initial and acknowledge that he or his signature signed that letter, no.

MR. REILLY: Exhibits 76 and 77 for identification.

xxx (Standby letter to Mr. Kaplan was marked Government's Exhibit 76 for identification, this date.)

(Supplemental letter to Government's Exhibit 76 for identification was marked Government's Exhibit 77 for identification, this date.)

Q I am going to show you Exhibits 76 and 77, and ask you whether these are the letters of commitment about which Mr. Kaplan was so concerned? (Handing.)

A This is a standby letter that I was referring to.

This is some sort of supplemental--

Q Supplemental to the original standby letter?

A The original standby letter, right. It was subject to certain conditions.

Q Did you ever tell Mr. Lester Wadsworth that these letters were just used as a stalling tactic to gain more time for financing for Mr. Kaplan?

A Any conversation I had with regards to Mr. Wadsworth with regards to these particular instruments is that--

THE COURT: Speak up. Several of the jurors have just raised their hands. They would like to hear you.

THE WITNESS: I am sorry.

A The only conversations I had with regards to Mr. Wadsworth with reference to these letters is that he could obtain a substantial banking relationship from National Motorcycle and I thought it was a good situation and I'm sure it would have been approved by committee if, in fact, the provisions within this letter of intent were lived up to, and I had no reason to believe that the loan would not be sponsored by Mr. Wadsworth.

Q Again, Oaks-Darby or your office prepared these letters?

A I don't believe we prepared them. I don't know. I'm not sure.

Q Are you testifying they came from Lester Wadsworth?

A The problem with the Hempstead branch was that they didn't have an electric typewriter and on occasion Mr. Max Goldwedder, who is an attorney in my suite, and myself would permit Mr. Wadsworth or one of his people to use our electric typewriter. They had a manual machine down there and it was, you know, something that I could care less about.

Also the wife of the assistant branch manager was working for me at that time.

Q It says "$500,000."

To your knowledge, that far exceeded Mr. Wadsworth's authority, isn't that correct?

A No different than what Mr. LeVien appeared to exceed, yes.

Q Excuse me, I am sorry.

Did he exceed it or did it not exceed his authority as far as you knew?

A If you work for a bank and you get the approval of committee, you sign the letter, then one would assume you got the permission to sign that letter and it is not exceeding his authority.

Q Was this letter sent out--was this letter prepared by your organization and not by Lester Wadsworth?

THE COURT: Which letter? You have at least two letters before him.

MR. REILLY: That is right.

Q The two letters, Exhibits 76 and 77.

A Anything that had to do with the Hempstead Bank would have been prepared by way of the Hempstead Bank, possibly with some assistance by myself, but it was signed and I'm sure sealed by--I didn't steal stationery from Hempstead Bank, if that is what you are referring to.

Q Didn't you work out the terms of this letter of commitment--I am referring now to Exhibit 77--with Mr. Kaplan's lawyer?

A We, Mr. Feeney and Mr. Kaplan's attorney, discussed the provisions of what Mr. Kaplan's attorney wanted, yes.

Q And did you play a part in those discussions?

A I was there, yes, I was.

Q And did you play the principal part rather than Mr. Feeney?

A Since I knew more about banking, I discussed more about the issues involved, yes.

Q And you drafted that rough draft of what the letter of commitment was going to look like?

A No. The attorney drafted the letter, because I'm not an attorney, and some of the provisions that were required, such as satisfactory credit reports and different things that I knew would be required by the bank, I was instrumental in suggesting that they be put in there, yes.

Q And then what did you do with this draft? What did you do with the draft for that letter of commitment?

A I believe--Annette wasn't working for me then--that Lester Wadsworth got that, I believe--again, you are going to object as hearsay.

I don't know exactly what transpired from that point on, other than I gave the provisions of that letter to both Mr. Kaplan's attorney and to Mr. Feeney.

Q Finally, with respect to Gerson Fabe, were you told by Frank LeVien that he had paid off the Gerson Fabe loan?

A No.

Q Were you told by Gerson Fabe that Frank LeVien had paid it off?

A Yes.

Q Yes.

And when did he tell you that?

A Oh, it was probably--well, it was in the summer after Mr. LeVien had been discharged from the bank.

Q He never told you while Mr. LeVien was still at the bank?

A No, he did not.

Q Did you ever tell him that Mr. LeVien still owed you $15,000?

A I told Mr. LeVien owed me $15,000, because I lost a considerable amount of money and I would say my business closed down because of what Mr. LeVien did with the bank, yes.

Q He did not have any particular loan or debt obligation to you, did he, for $15,000?

A I gave--I lent Mr. LeVien, some time back, and I do have a check, if I can get ahold of it, for $7,500 that I lent to Mr. LeVien, again, without a note, some time back when I was doing pretty well, and then there were other transactions as to fees that I was to get that I didn't get because of the hard feelings that were created by Mr. LeVien's activities because of overdrafts.

Q Were you holding Mr. LeVien accountable for those fees?

A Was I holding him accountable for it?

Q Yes.

A Well, Number one, I didn't get my fee from

Alpha Scaffolding Equipment until he cleared up the account, which Jack Kitson knew about, and that was one of the problems.

Q You heard Jack Kitson testify you were not entitled to that fee?

A Yes. But I also read his grand jury testimony that--

MR. REILLY: Objection and move to strike it.

THE COURT: Sustained.

MR. REILLY: No further questions.

MR. WEINBERG: I have no further questions, your Honor.

THE COURT: Very well.

You may step down, sir.

(Witness excused.)

THE COURT: Mr. Weinberg?

MR. WEINBERG: Your Honor, at this time the defense rests.

THE COURT: Mr. Reilly?

MR. REILLY: Your Honor, the Government would like to call two rebuttal witnesses.

The first witness is Lester Wadsworth.

THE COURT: Very well.

(Pause.)

THE COURT: Ladies and gentlemen, Mr. Wadsworth's testimony is not being offered to prove the character of the defendant. Instead, as I understand it, it is being offered solely on the issues of knowledge and intent and should be considered by you only in connection with those issues.

Are there any further limiting instructions which either counsel wishes the court to put to the jury?

MR. REILLY: No, your Honor.

MR. WEINBERG: If your Honor please, I am going to renew my previous objection to Mr. Wadsworth's testimony with respect to knowledge and intent.

THE COURT: Do you agree that knowledge and intent is an issue here in the case?

MR. WEINBERG: Yes, I do, your Honor. But it was my understanding, perhaps incorrectly, that we have had a ruling from the bench on that and that the testimony with respect to--

THE COURT: Let us proceed to the side bar briefly. I will hear you.

MR. WEINBERG: Thank you.

(At the side bar.)

MR. WEINBERG: Sir, it was my understanding that we had a ruling from your Honor before adjourning for lunch with respect to Mr. Wadsworth's testimony regarding knowledge and intent.

His testimony at this time perhaps solely to theissue of credibility I can understand and I would request that your Honor so advise the jury.

But, again, I raise the same objection--I renew my objections regarding prejudice and confusion to the jury, your Honor.

MR. REILLY: Your Honor, may I request that for the time being we give an instruction to the jury that it is being offered for credibility. I would like to argue this before your Honor rules on requests to charge.

At this time we can ask that you charge--

THE COURT: Are you saying it is being offered solely for credibility?

MR. REILLY: I am offering for credibility and for knowledge and intent.

However, I would like an opportunity to argue this at a later time when you charge the jury.

If you charge the jury that it was only offered for credibility, then Mr. Weinberg's position is secure.

THE COURT: But I am troubled, gentlemen, on this matter, because as I read Rule 608(B), specific instances of the conduct of a witness for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.

My query at this point is whether by proceeding now to call Mr. Wadsworth you are presenting extrinsic evidence.

I go on and read, again, from 608(B).

"They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning his character for truthfulness or untruthfulness or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross examined has testified.

"The giving of testimony, whether by an accused or any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility."

My problem is that I think you were entitled, under my reading of this rule, to cross examine the witness.

Now my problem is if we are talking about credibility, are you not about to proceed to present extrinsic evidence and, therefore, are you not proceeding

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in contravention of the rule?

Off the record.

(Discussion off the record.)

MR. REILLY: Your Honor, under these circumstances, I am going to renew my offer to prove this as a similar act.

The witness has taken the stand, he has put the issue of knowledge and intent squarely in issue by his direct testimony. I think it is a discretionary ruling on the Government's direct case. I think it is more so now.

I think the best basis here is on similar acts.

THE COURT: Off the record.

(Discussion off the record.)

(In open court.)

THE COURT: Ladies and gentlemen, I have been conferring with counsel at the side bar on a legal matter. Again, I would reiterate that that is not a matter for the jury's concern.

In looking at the clock, I notice that it is going on 4:30.

I indicated to you, particular in view of the season of the year and the fact that there are jurors who come from as far away as Ulster County, that we would recess at 4:30.

I have another matter on tomorrow morning at 9:30 and, therefore, I am going to excuse the jury and direct that you return tomorrow morning at 10:00 a.m.

Please do not discuss the case among yourselves, do not remain within the hearing of anyone else who may be discussing the case.

If you learn anything about the case from any source outside of the courtroom, you are directed to report the matter to me at once on your return tomorrow morning.

Finally, please keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

Just so you have an idea of where we are, I suggest that we are at the very least very close to the completion of the evidence in the case.

I expect that at the outside, the evidence will be completed sometime tomorrow morning. That will be followed by the summations, and depending upon the hour, I will either be charging the jury sometime tomorrow or, as I see it now, on Thursday morning. That is the way it looks at the present moment.

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There are some things that were going to take up between now and when we see you next, but I do suggest to you that there is some possibility of the case going to the jury tomorrow, and if not tomorrow, I suggest that the case would go to the jury Thursday morning.

The jury is excused until 10:00 a.m. tomorrow morning.

Good night, everyone.

(The jury left the courtroom.)

THE COURT: Mr. Wadsworth, I direct that you return tomorrow morning at 10:00 a.m., although it may be an inconvenience for you. This direction will be firm, unless Mr. Reilly at some interim time indicates to you that it would not be necessary for you to return.

But you have my instruction to be here, subject only to Mr. Reilly indicating directly to you that your presence will not be required.

Is that agreeable, Mr. Reilly?

MR. REILLY: Yes, your Honor.

There is an additional witness, Mr. David Kaplan, who is in the courtroom.

THE COURT: Mr. Kaplan?

MR. KAPLAN: Sir, I have a problem. My attorney is pleading a matter at Supreme Court, Manhattan tomorrow at 9:30 and I have to be present.

Now, I am just one building away, but I am afraid I have to take care of my own personal needs first.

THE COURT: No.

You are directed by me to be present here tomorrow morning at 10:00 a.m.

You will advise your counsel of that. He will advise the judge in the State Supreme Court that you have been directed to return tomorrow morning, that the case here is a criminal case and we are on the rebuttal case and you are expected to be called very promptly, and I am certain that the judge across the street will accommodate both you and your counsel.

But you are under a direct order from me to return here. Absent your being present at the appointed place and time, you could be held in contempt of this court.

It is necessary, as you may or may not understand, that we conclude this matter tomorrow morning.

I hoped that we could conclude it this evening.

So the same admonition that is given to Mr. Wadsworth applies to you, and that is subject to change only if you receive direct instructions from

Mr. Reilly that for one reason or another he either desires that you not be called or that he is in a position to accommodate you by perhaps a half hour, but no more.

MR. REILLY: Your Honor, may I suggest one slight modification to that, and it is obviously your Honor's order.

If Mr. Kaplan would be at the Supreme Court, Mr. Holbrook of the FBI can go on ten minutes' notice and, in any event, he would be the second witness, so as long as Mr. Kaplan would agree that he would hold himself available at Supreme Court, Part I, then I do not think either case would lose.

THE COURT: Where are you supposed to be in the Supreme Court, sir?

MR. KAPLAN: Part I, sir.

THE COURT: Special Term or Trial Term?

MR. KAPLAN: No, Special Term, sir.

THE COURT: Is a hearing scheduled?

MR. KAPLAN: A hearing and a motion, yes, sir.

THE COURT: Normally, that involves oral argument. Special Term Part I does not ordinarily take evidentiary matters.

I suggest that you go there with your attorney at 9:30. I suggest that you make an arrangement with

Mr. Reilly and Mr. Holbrook that you will be available, and I am certain we can work you in at 10:00 or 10:15 here or 10:30 and get you back.

Normally, the schedule over there, from my recollection, is they call the calendar of 200-odd motions and you sit, and if your attorney wants to be heard after they get finished with the applications, they may hear you at something like 11:00 or 11:30.

So you are under instructions to be here, but I will give you the latitute which has been indicated.

MR. KAPLAN: I appreciate it.

THE COURT: Please do not leave Special Term Part I without checking first with Mr. Reilly and/or Mr. Holbrook.

MR. KAPLAN: I won't, sir.

THE COURT: Very well.

I am sorry to inconvenience you.

MR. KAPLAN: Incidentally, your Honor, I came all the way from the Bronx at seven o'clock this morning. I was here this morning and returned to the Bronx and I came back this evening, this afternoon.

THE COURT: I am aware that the Government had wanted to put you on earlier, but there is a legal problem and we have been trying to deal with it.

I do regret the inconvenience caused to you.

MR. KAPLAN: That is all right.

THE COURT: But I know you understand.

MR. KAPLAN: That is all right.

THE COURT: But I know you understand.

MR. KAPLAN: Thank you, sir.

THE COURT: Thank you, Mr. Kaplan.

(An adjournment was taken to January 26, 1977, at 10:00 o'clock a.m.)

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UNITED STATES OF AMERICA

vs. 76 Cr 999 (RJW)

JOHN M. EBBECKE

New York, January 26, 1977,
10:00 a.m.

Trial resumed.

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(In open court, jury present.)

THE COURT: Good morning, ladies and gentlemen.

I apologize for our delay in resuming this morning. I had another matter on which was just concluded and I am now in a position to tell you that we have a clear track ahead and we will be proceeding with the case.

I suggest that we will work until approximately 1:00 and we will see how we progress during the ccurse of the morning and probably at the luncheon recess I will be better able to tell you what the time schedule will be from that point on.

You may proceed, Mr. Reilly.

MR. REILLY: Yes, your Honor.

The Government recalls Mr. Frank LeVien.

THE COURT: All right.

(Continued on page 395.)

FRANK WILLIAM LeVIEN, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. LeVien, during 1974, were you ever employed by the Chempar Chemical Company?

A No.

Q Did you act as a consultant in any way to the Chempar Chemical Company during 1974?

A No.

Q To your knowledge, were you ever advised--withdraw that.

To your knowledge, did the Chempar Chemical Company ever take out a key man life insurance policy on your life during 1974?

A There was some talk about that between myself and the principals of Chempar, primarily centered on the fact that Chempar and its parent company, Irrigation & Industrial Development Corp., were looking to develop business in Nepal because they are engineers in the irrigation systems and Nepal had several--being an agricultural country, needed the use of their facilities and that could have been facilitated by myself and

Mr. Kalal or myself after Mr. Kalal's death, so there was talk that had I left the bank I would have been able to help Chempar develop its service in Nepal.

Actually, regarding this matter, nothing ever got off the ground. I never received any funds from Chempar as a consultant or anything else. It was left in the talking stage and there it died.

Q Were you an adviser to any other company during 1974?

A No, not to my knowledge.

Q Did you receive compensation from any other source other than the Manufacturers Hanover Trust Company during 1974?

A No, not to my knowledge.

MR. REILLY: No further questions.

MR. WEINBERG: I have no questions, your Honor.

THE COURT: You are excused, sir.

Thank you very much.

(Witness excused.)

MR. REILLY: The Government next calls Mr. David Kaplan.

(Continued on page 397.)

DAVID S. KAPLAN, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

THE COURT: I should like to give the jury an instruction at this time.

Ladies and gentlemen, the evidence you are about to hear is being received for a very limited purpose. You may consider it only insofar as it bears on the issue of Mr. Ebbecke's knowledge and intent with respect to the events charged in the indictment.

You are not to consider this testimony for any other purpose.

I would just suggest that I will instruct you further in this matter at the time I charge you.

MR. WEINBERG: If your Honor please, prior to the introduction of this testimony, I would like to note for the record the defendant's objection.

THE COURT: Yes.

The record reflects that the defendant has interposed a timely objection. The court has overruled the objection.

MR. WEINBERG: Thank you.

THE COURT: Is there anything further before we begin, gentlemen?

MR. REILLY: No, your Honor.

THE COURT: You may proceed, Mr. Reilly.

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Kaplan, where do you reside, county and state?

A 630 West 246th Street, Bronx, New York.

Q And what is your business?

A I'm an insurance broker and agent.

Q Where is that located?

A 2260 East Tremont Avenue, Bronx, New York.

Q In 1974, how were you employed or what was your business?

A I was the president and sole owner of National Motorcycle Plan, Inc. at 2260 East Tremont Avenue, Bronx, New York.

Q Is that an insurance business or is that some other type of business?

A It's an insurance agency.

Q Did there come a time when you met an individual by the name of John Ebbecke?

A Yes.

Q And what were the circumstances under which you met Mr. Ebbecke?

A I was interested in obtaining a loan to buy an insurance company to write motorcycle insurance, and through a dear friend and associate of mine, Steve Taracido, who introduced me to a Lou Barcelon who introduced me to a Jim Feeney--Jim Feeney came to my office, I told him what I was interested in doing and he said it was do-able.

MR. WEINBERG: Objection, your Honor, as to what Mr. Feeney may have told this witness.

THE COURT: Yes, I will sustain the objection.

I will strike what Mr. Feeney said.

In any event, Mr. Feeney came to your office and you had a conversation with him, is that correct?

THE WITNESS: That's correct.

Q After this conversation with Mr. Feeney, did you have occasion to meet Mr. John Ebbecke?

A Mr. Jim Feeney introduced me to Mr. John Ebbecke.

Q And how was he introduced to you? How was he described with respect to Mr. Feeney?

A He was described as a partner or an associate of his who--

Q In what enterprise?

A He didn't specifically refer to any enterprise, but he said that through John Ebbeck'e expertise, I would be able to obtain a loan.

Q Did Mr. Feeney operate under any name, any partnership or business name?

A The check that I paid was drawn to the order of Oaks-Darby.

Q Where did you meet Mr. Ebbecke?

A I met Mr. Ebbecke in Mineaola, Long Island.

Q And to the best of your recollection, when did that take place?

A On or about the beginning of March of 1974.

Q Who else was present?

A Jim Feeney, I believe a John Duncan. To the best of my recollection, those were all that were present at that meeting.

Q Tell us what went on at this meeting.

A I submitted my financial statement, described the purpose for the loan, what terms I needed in order to repay the loan and I believe I was advised at that time that I was to return the following Monday--

Q Who advised you?

A John Ebbecke and/or Jim Feeney.

Q John Ebbecke was present, in any event, is that correct?

A Yes.

Q How much money were you seeking in connection with this loan?

A $500,000.

I also asked for a letter of credit to an insurance company with whom I was doing business?

Q In what amount?

A $200,000.

Q Would you tell us how a letter of credit works, to your knowledge?

MR. WEINBERG: Objection to that, your Honor. He has not been established as an expert in the banking field or shown any knowledge as to the operation of letters of credit.

THE COURT: I do not know that you have to be an expert.

Do you know, sir, what a letter of credit is and could you describe it?

THE WITNESS: Yes.

THE COURT: What is it?

THE WITNESS: A letter of credit is a credit instrument that is given by a bank to a creditor that if certain conditions are met the creditor could then present the letter of credit to the bank and the bank would have to pay that creditor the sum of money outlined in that letter.

Q Did you hear from Mr. Ebbecke again?

A I went back to Mineola with my attorney, Charles W. Chippola, that following Monday or Tuesday.

Q Who was there?

A Present at the meeting was John Ebbecke, Jim Feeney, myself and Charles W. Chippola.

Q What happened?

A Chippola and Ebbecke prepared a rough draft of what conditions were to be outlined in a commitment letter for the loan of $500,000.

We were then instructed that the bank would type it up, it would be delivered to me by a John Duncan, at that time I was to pay $10,000 as a fee for services rendered.

Q Did anybody indicate at that meeting who would issue the letter of credit and the letter of commitment?

I will withdraw the question.

Was this discussion concerning a letter of commitment at this particular meeting?

A Yes.

Q And did John Ebbecke or anybody else tell you who would issue the letter of credit--letter of commitment?

A They weren't sure themselves.

Q Did there come a time when you received a letter of commitment?

A That afternoon John Duncan delivered--not a letter of credit, but a commitment letter for $500,000.

Q And what did thatletter purport to do?

A If I satisfied certain conditions, I could bring down $500,000 from, I believe it was, the Bank of Hempstead. I would be able to receive a loan of $500,000.

Q Did you receive a letter of credit at any time?

A I got a copy of a letter of credit that was purported to have been mailed to the First National City Bank of New York.

Q In your understanding of how a letter of credit operates, should the First National City Bank have been the recipient of the letter of credit, the original?

A Yes.

Q What did you do upon the receipt of this copy of the letter of credit?

A I called Terry McGovern, a vice president of First National City Bank, and asked to find out whether he had gotten his letter.

Q What did you find out?

A Excuse me?

Q Were you able to find out whether he had gotten such letter?

MR. WEINBERG: Objection.

THE COURT: Sustained.

Please do not tell us what he said. That would be hearsay and inadmissibility.

Answer the question in the form it is or will be repeated.

Q Were you able to determine from this conversation whether such a letter had been received?

THE COURT: Just answer yes or no.

A No.

Q What did you do then?

A I called up the signatory appearing on this copy of a letter of credit, a Mr. Lester Wadsworth.

Q Where did he work?

A It was on his stationery as manager of the Bank of Hempstead, in the building that I met John Ebbecke and Jim Feeney in Mineola, Long Island.

Q What did you say to Mr. Lester Wadsworth?

A I said, "I'm Dave Kaplan of National Motorcycle

Plan, Inc.

And he responded, "Who?"

And I said, "You have given me a commitment letter for $500,000 and you also have given me a letter of credit for $200,000."

Q Did Mr. Wadsworth recognize your name in general?

A No.

Q After that conversation, what did you do?

A Steve Taracido shares an office with me.

I said, "Steve, this chap doesn't even know who I am. Let's run out to Mineola immediately."

Q What did you do?

A We ran out to Mineola and confronted John Ebbecke and Jim Feeney with the fact that Lester Wadsworth doesn't acknowledge executing these letters.

Q And what did Mr. Ebbecke say?

A Words to the effect that--

MR. WEINBERG: Objection what the effect of the words may have been.

THE COURT: Yes. Tell us what he said in exact words or in substance, that is, in summary form as you recall it.

A "Mr. Wadsworth does not like to discuss these

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matters over a phone.

So Steve Taracido asked if Mr. Wadsworth--

MR. WEINBERG: Objection.

Q Was Mr. Ebbecke present?

A Yes.

Mr. Taracido asked if Mr. Wadsworth could please come upstairs to the office of John Ebbecke and Jim Feeney, and he said, "Yes," and Mr. Lester Wadsworth appeared in the office.

Steve Taracido confronted him with the letters and said, "Did you execute these letters and did you sign them?"

He said, "Yes."

He said, "Would you be kind enough to please initial this letter?"

And Lester Wadsworth initialled the letter and underneath it Steve Taracido signed, dated it and then signed it "Steve Taracido."

Q This is the copy of the letter of credit that had been mailed to you, is that correct?

A Yes.

Q What did Mr. Wadsworth do then?

A He left.

Q Then what did you do, to the best of your recollection?

A I went back to my office comforted by the fact that--

THE COURT: You went back to your office, period.

THE WITNESS: Yes.

Q Did there come a time when you were asked to surrender the document that had just been initialled by Mr. Wadsworth?

A Yes.

Jim Feeney called for a meeting--

MR. WEINBERG: Objection, your Honor.

THE COURT: The answer is "yes."

We will strike the rest of it.

Q Did you surrender those documents? Did you surrender that document?

A I surrendered the original copy of the letter of commitment for $500,000.

Q And did you surrender the copy of any other document?

A Yes. I surrendered a copy of the purported letter of credit for $200,000.

Q Did you make photostatic copies for your own files of those letters, those documents that you had surrendered?

A Yes.

Q Was there in addition any other original document that you had purportedly signed by Lester [illegible]orth?

A Another letter correcting some of the conditions of either the letter of credit or the commitment letter.

Q And did you surrender that copy or did you retain it?

A I retained it.

Q As a result of the conversation or as a result of your surrendering these documents to Mr. Feeney, were arrangements made with some other bank?

MR. WEINBERG: I object to the form of that question.

THE COURT: Yes.

MR. REILLY: Withdrawn.

Q Did you continue your attempt to obtain a commitment from the Bank of Hempstead?

A Yes--no, not from the Bank of Hempstead. Jim Feeney said that he has another bank that he--

MR. WEINBERG: Objection.

THE COURT: Yes.

MR. REILLY: We submit under agency principles here, this testimony would be admissible.

THE COURT: I think you are going to have to establish a little more, because he was introduced to Mr. Ebbecke by Mr. Feeney, as I recall the testimony and, of course, it is the jury's recollection which governs, as a partner or associate, and I, frankly, have difficulty accepting the agency theory on the state of the record as it exists.

Q Mr. Kaplan, did you subsequently receive correspondence from the Oaks-Darby, Ltd. company in connection wtih financing from a different bank?

A Yes.

Jim Feeney offered to return the ten--

THE WEINBERG: I object.

THE COURT: Strike the rest beyond the "Yes."

Q I am first going to show you a series of three exhibits, Exhibits 75, 76, and 77, and ask you whether you can identify those exhibits (handing).

A The first exhibit is a copy of the letter of credit for $200,000 initialled by Lester Wadsworth before Steve Taracido.

THE COURT: Just so the record is clear, as I understand your prior testimony, the document actually initialled was given back to Mr. Feeney, and what you have beforeyou is a copy which you made of that document before you gave the initialled copy back, is that right?

A That's correct.

THE COURT: All right.

A The second document is an additional letter signed by Lester W. Wadsworth on the Hempstead Bank stationery supplementing the loan commitment letter.

The third letter is the letter of commitment for $500,000, the original of which was returned to Jim Feeney.

MR. REILLY: I am now going to mark as Government's Exhibit 78 this two-page document.

xxx (Two-page copy of letter dated March 29 to Mr. Kaplan by John Ebbecke was marked Government's Exhibit 78 for identification, this date.)

Q Can you identify that document? (Handing.)

A This is a copy of a letter that was written to me on March 29 by John Ebbecke--

Q On the stationery of what company?

A Oaks-Darby, Ltd. stationery.

John Ebbecke identifies himself as the executive vice president--

THE COURT: No, do not go beyond that. You have answered the question.

Q Did you receive that in the mail from Mr. Ebbecke?

A Yes.

MR. WEINBERG: I am going to object to that, your Honor. It was received in the mail.

THE COURT: It was received in the mail, period.

Q Did you receive it, to the best of your recollection?

A It was either mailed to me or delivered to me by John Duncan.

MR. REILLY: Your Honor, we offer in evidence Government's Exhibits 75 through 78.

MR. WEINBERG: If your Honor please, may I have one voir dire question with respect to Government's Exhibit 78?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. WEINBERG:

Q Mr. Kaplan, do you of your own knowledge know or would you recognize Mr. Ebbecke's signature?

A No, sir.

MR. WEINBERG: Thank you.

I have no objection to Government's Exhibits 75, 76 and 77.

However, with respect to Exhibit 78, I am going to raise an objection on the ground that the witness testified he does not know Mr. Ebbecke's signature and he cannot thereby state who sent this letter to him or who signed it.

THE COURT: Very well.

Taking the matters first, Exhibits 75, 76 and 77 are received, no objection.

I would instruct the jury that these exhibits are being received for a very limited purpose. You may consider them only insofar as they bear on the issue of Mr. Ebbecke's knowledge and intent with respect to the events charged in the indictment.

You are not to consider these exhibits for any other purpose.

xxx

(Government's Exhibits 75, 76 and 77 for identification, respectively, were received in evidence.)

(Continued on page 413.)

DIRECT EXAMINATION CONTINUED

BY MR. REILLY:

Q Did Mr. Ebbecke ever visit your premises?

A Yes. He visited my offices in the Bronx with Jim Feeney, and I took John Ebbecke and Jim Feeney out to lunch.

This was after the letter of commitment but before the issuance of a letter of credit.

Q And did you have any discussions about doing business with the Vanguard National Bank with John Ebbecke?

A Yes. He told me that he was associated--that he was doing business with the Vanguard National Bank, and I volunteered to purchase $100,000 CD from the Vanguard National Bank.

Q Was this Jim Feeney talking or John Ebbecke?

A Neither one of them specifically asked me for it, but I felt if we were to have a regular banking relationship, I'd like to help a minority-owned bank.

MR. REILLY: Your Honor, we reoffer Government's Exhibit 78 and ask your Honor to examine the contents in connection therewith.

Your Honor, I would also like you to consider in connection with that offer, Government's Exhibit 71, which is in evidence (handing).

(Pause.)

THE COURT: Was Mr. Ebbecke questioned about Exhibit 71 when he was on the stand, gentlemen?

MR. REILLY: My recollection is that he was and that he admitted--

THE COURT: Let me suggest that you show both documents to Mr. Weinberg.

MR. REILLY: And, further, your Honor, Mr. Ebbecke admitted on cross examination that he signed letters as executive vice president, although he was not on the bank card.

THE COURT: I remember some inquiry on the subject. I do not remember the exact questions and answers.

(Pause.)

MR. WEINBERG: If your Honor please, Exhibit 71 is a check drawn on Gramercy Capital dated July 12, 1974.

THE COURT: Bearing the signature, right?

MR. WEINBERG: Correct.

THE COURT: The other document is a letter.

I recognize your objection, which was properly made, and I now ask you, in view of the presentation, whether you do adhere to the objection or whether you take a different position.

MR. WEINBERG: Your Honor, I am still going to adhere to the objection.

I am not an expert--a handwriting expert--

THE COURT: No. But it is a matter, obviously, for you in the first instance to determine.

You adhere to the objection?

MR. WEINBERG: Yes, I do.

THE COURT: Let me see it again.

(Pause.)

THE COURT: Let me inquire in this respect.

Mr. Kaplan, you recounted a conversation, I believe, that you had with Mr. Feeney--was it Mr. Feeney and Mr. Ebbecke regarding the Vanguard National Bank?

THE WITNESS: Yes.

THE COURT: Can you tell us when you had that conversation with them, if you recall?

THE WITNESS: I imagine it was either the end of March or early April 1974.

THE COURT: Do you recall clearly what date it was?

THE WITNESS: No, sir.

THE COURT: I show you Government's Exhibit 78 for identification, and ask if that refreshes your recollection regarding the date you had the conversation with Mr. Ebbecke and Mr. Feeney (handing). If not the exact date of the conversation, whether you can tell us it was before or after the date that appears on that letter.

THE WITNESS: Before March 29, 1974.

THE COURT: And with whom did you have that conversation that you recounted, speaking of the conversation you state you had prior to March 29, 1974?

Whom did you have it with?

THE WITNESS: I had conversations with John Ebbecke and Jim Feeney at lunch where we discussed alternative courses of action regarding this letter of credit of $200,000.

THE COURT: Did you also discuss a certificate of deposit to be purchased from the Vanguard National Bank?

THE WITNESS: Yes.

THE COURT: With whom did you discuss that?

THE WITNESS: With John Ebbecke and Jim Feeney.

THE COURT: Was that prior to or subsequent to March 29, 1974?

THE WITNESS: Prior to March 29, 1974.

THE COURT: Did the conversation take place prior to the date on which you received the letter, which is Government's Exhibit 78 for identification?

THE WITNESS: It was prior to receiving my letter of credit from the--

THE COURT: That is not my question.

Did the conversation which you had with Mr. Feeney and Mr. Ebbecke, which included discussion about the Vanguard National Bank and a certificate of deposit from that bank, did that take place prior to your receiving the letter which is Government's Exhibit 78 for identificiation?

THE WITNESS: Prior to March 29, 1974.

THE COURT: Prior to receiving the letter?

THE WITNESS: Prior to receiving the letter.

THE COURT: Counsel, do you wish to adhere to your objection?

MR. WEINBERG: Yes, your Honor. My ground is that Mr. Feeney was also present at these conversations and it is conceivable that he could have written this letter and--

THE COURT: Yes, it is, and I am going to leave it to the jury as to who wrote this letter.

The jury will have available to it numerous material, including, of course, the documents to which reference has been made.

I think the final and ultimate determination is a fact issue for the jury.

I will leave it to them and that is their province and it certainly is not the court's province to involve itself with it.

With the understanding that the exhibit is received for a limited purpose and the determination of who wrote the exhibit is a matter for the jury's determination based on all the evidence before it, the objection is overruled.

MR. WEINBERG: Thank you, your Honor.

xxx (Government's Exhibit 78 for identification was received in evidence.)

MR. REILLY: Your Honor, at this time I have no further questions of Mr. Kaplan.

However, I would request, your Honor, that we be allowed to submit to the jury for their perusal at this time these four exhibits.

THE COURT: You may.

May I suggest that you take two at one end and two at the other end and let them cross.

Ladies and gentlemen, ultimately, you will see all four of the exhibits but you will see them two at a time.

(Pause.)

THE COURT: Mr. Reilly, have you completed your direct examination of the witness?

MR. REILLY: Yes, I have, your Honor.

THE COURT: Mr. Weinberg.

MR. WEINBERG: The defense has no questions of this witness.

THE COURT: You are excused, sir.

(Witness excused.)

THE COURT: Mr. Reilly.

MR. REILLY: The Government calls Lester Wadsworth.

LESTER W. WADSWORTH, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: Ladies and gentlemen, I give you the same instruction I gave to you when Mr. Kaplan testified a short while ago.

The evidence you are about to hear from this witness is being received for a very limited purpose. You may consider it only insofar as it bears on the issue

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of Mr. Ebbecke's knowledge and intent with respect to the events charged in the indictment.

You are not to consider this testimony or any exhibits introduced through this witness for any other purpose.

At this time I would note for the record that a timely objection was interposed by Mr. Weinberg on behalf of Mr. Ebbecke and has been overruled.

MR. WEINBERG: Thank you, your Honor.

THE COURT: You may proceed, Mr. Reilly.

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Wadsworth, where do you now reside?

A Fort Lauderdale, Florida.

Q And what is your business?

A Carvel Ice Cream.

Q What do you do there?

A I own it.

Q How long have you been there?

A Since May of 1976--1975. I'm sorry.

Q Do you work at the Carvel stand?

A Yes, I do.

Q Does anybody else work with you?

A No. I have a part-time kid comes in evenings, that's all.

Q Was there a time when you were ever employed by the Hempstead Bank?

A Yes.

Q When was that?

A From January of 1966 through April of '74, I believe.

Q And during that period of time, were you ever associated with the Mineola branch of the Hempstead Bank?

A I was the manager of that branch.

Q During what period?

A From '72 through '74, I believe.

Q When you were at the Hempstead Bank, Mineola branch, did you have occasion to meet John M. Ebbecke?

A Yes.

Q Where was he, his office, to your knowledge?

A At the time I met him?

Q Yes.

A His office was in, I believe, Great Neck someplace.

Q In 1974 where was his office?

A In the same office building as my branch was.

Q Did John Ebbecke ever agree to lend you any money?

A Yes.

Q When was that and what for?

A For the purchase of an automobile.

Q When was that?

A Late February or early March of 1974.

Q And how much money did he lend you?

A $2,400.

Q Did he issue you a note?

A No.

Q Did he ask for any interest?

A No.

Q Did you use the money?

A Yes, I did.

Q Did there come a time, directing your attention to late March, early April of 1974, did there come a time when you received a telephone call from an individual who identified himself as David Kaplan?

A Yes.

Q What did you say?

A I said I had no knowledge of any David Kaplan or what he was talking about.

Q Shortly thereafter, did you have occasion to get a telephone call from anybody at the First National

City Bank?

A Yes. They were asking to verify a letter of credit.

Q What did you say?

A I directed him to the main office of the Hempstead Bank, because that's where letters of credit were issued from.

Q Did they identify the person on whose behalf the letter of credit was issued?

A National Motorcycle Sales or Insurance or something like that.

Q Subsequent to that, did you get a telephone call from John Ebbecke?

A Yes.

Q About what date, to your recollection?

A I believe it was the same date.

Q Tell us what happened.

A He asked me to meet Mr. Koch in a cocktail lounge which was also in the same office building as the bank.

Q Did you see Koch?

A I believe it was Koch, yes. I might be mistaken.

Q Did you come to meet a man by the name of David Kaplan subsequently?

A I'm sorry, it was Kaplan. I'm sorry.

Q Did Mr. Ebbecke ask you to meet a Mr. Kaplan or a Mr. Koch?

A Mr. Kaplan.

Q What did he say in the conversation?

A He just said, "Will you step across the hall. I want you to meet a Mr. Kaplan."

Q When he said "across the hall," what did he mean?

A The Caucus Restaurant was across the hall from my bank.

Q Did you do so?

A No, I didn't.

Q Did you hear from Mr. Ebbecke again?

A He called me that evening at home.

Q What did he say?

A He asked me, you know, why I didn't show up, and I told him, you know, I didn't feel I wanted to be involved with a Mr. Kaplan and that's why I didn't step across the hall.

Q Did you hear from Mr. Ebbecke after that telephone conversation?

A The following day.

Q What did he say?

THE COURT: Sir, would you please keep your voice up. I think the jurors are having difficulty hearing you.

You heard from him the following day?

THE WITNESS: Yes, sir.

THE COURT: Very well.

Q About what time of day, if you can recall?

A In the afternoon, after lunch. I don't recall the time of day.

Q What did he say?

A Would I come up to his office to meet Mr. Kaplan.

Q Did he say anything else?

A He said I had let him down the previous day by not meeting Mr. Kaplan and caused a great deal of difficulty on his and Mr. Feeney's part and I could straighten this all out by just meeting Mr. Kaplan and identifying myself as Lester Wadsworth and I was an officer of the Hempstead Bank.

Q During this telephone conversation, did he make any reference to the $2,400 loan that he had made to you?

A He said he had done me a favor in lending me the money and I should--you know, I could return the favor in this manner.

Q Did he tell you anything further with respect to that loan, other than he lent you that money as a favor?

A He said, you know, he realized possibly I was having difficulty or would have difficulty in paying back the loan and we could, you know, just let that ride.

Q Did you go up to Mr. Ebbecke's office?

A Yes, I did.

Q What happened?

A I was confronted by a Mr. Feeney, Mr. Kaplan, Mr. Ebbecke and another gentleman, I don't recall who, and shown a letter with my name written on it, a letter of credit actually is what it was.

Q What did you do when you were shown that letter of credit?

A I don't do really too much of anything. I kind of sat there.

Mr. Kaplan stated that he was terribly sorry that, you know, all this trouble had transpired over this letter and he really couldn't do business with my organization anyway, he was going to--he had received a letter of credit from the Vanguard National Bank and perhaps at some future date he could do business with my bank.

Unfortunately, the gentleman that was with him was very antagonistic and insisted that I initial the letter.

Q I am going to show you Exhibit No. 75, which is in evidence.

Do your initials appear on that copy?

A Yes, they do.

Q Where do they appear?

A Lower left-hand corner.

Q Is that below the signature "Lester Wadsworth"?

A Yes.

Q Directing your attention to the signature, "Lester Wadsworth," is that your signature?

A No, sir.

Q And prior to that meeting in the office with John Ebbecke, had you ever seen this letter of credit before?

A No, sir.

Q And you had never signed that letter of credit before?

A No.

Q Showing you Government's Exhibit No. 76 and 77, I will first ask you with respect to both letters, directing your attention to the signature line, is the signature "Lester W. Wadsworth" your signature?

A No.

Q Had you seen those exhibits--had you seen copies or originals of those letters at any time prior to your meeting in Mr. Ebbecke's office with Mr. Kaplan and the others?

A No.

Q Were you asked to sign any of those documents or copies thereof?

A No. That's not my signature.

Q Were you asked to give an initial?

A On these? No.

Q What was your lending limit--did you have a lending limit as manager of the bank?

A Yes, I did. $15,000.

Q And if someone came into you asking for a letter of credit, what was the procedure at your bank?

A We had a regular--a special department that handled letters of credit.

Q At Mineola, in your branch?

A No. At 40 Main Street in Hempstead.

Q Is that the main branch of the Hempstead Bank?

A Yes.

Q What was your salary as manager of the bank at that time?

A About $15,000.

Q After you left the meeting, did you have a conversation with John Ebbecke?

A I had a conversation with John Ebbecke with regards I was very upset about the whole situation--

THE COURT: No. Do not tell us how you felt. Tell us what was said.

A I said I wanted all the papers back with my--in particular the one I had just initialled or I was going to cause a great deal of difficulty.

Q What did Mr. Ebbecke say, if anything?

A He said he would talk to me about it at a later date, you know, as soon as Mr. Kaplan and his associate were out of the area or out of earshot.

Q Did he tell you what, if anything, was the purpose of these various letters?

A I don't recall if it was Mr. Ebbecke or Mr. Feeney, but it was indicated to me that these letters were strictly--

MR. WEINBERG: I object to it.

THE COURT: Were they both present when this conversation you are about to relate took place?

THE WITNESS: Well, this conversation was in the hallway from an office and there were poeple kind of all milling around and they were all there but, you know, whether their attention was directed at what I was saying, both or individually or jointly, I don't recall.

Q I assume Mr. Kaplan wasn't present at this conversation.

A No.

I told him I wanted the letters back and in particular the one I initialled immediately.

Q Can you recall whether Mr. Ebbecke said to you anything, whether Mr. Ebbecke said anything to you concerning the purpose of these letters at any time?

A At a later date, I don't know if it was a day or two days or three days or a week, it was plain to me that these letters--

Q Who explained that to you?

A Mr. Ebbecke.

THE COURT: Yes. What did he say?

A The letter was just a stall, because they were getting a letter of credit for Mr. Kaplan from the Vanguard National Bank, but he was pressuring them time-wise, so this one was given to him just to show that they were working on his letter of credit and they were going to pull this one and give him the real one as soon as it came through.

Q What became of the documents that you requested from Mr. Ebbecke?

A Mr. Feeney came into my office the following--I don't recall if it was the following morning, I know it was the following working day, there might have been a weekend in between--in fact, I think there was a weekend--came into my office and put a stack of papers on my desk, the top one being the one I had previously initialled, and I just tore them all up, destroyed them right there on the spot and told Mr. Feeney to get out of my office.

Q Did you terminate your relationship with the Hempstead Bank?

A I terminated my relationship with the Hempstead Bank when a photostat of the letter that I had initialled turned up at our letter of credit department at the main office and I was confronted with it by my superiors and asked to explain it, and I explained the situation, and at the time I was asked to resign, not because of the letter of credit because they knew it wasn't my signature, but because of the fact I tried to cover it up.

Q Were you subsequently interviewed by agents of the FBI?

A Yes, yes.

Q And have you and your attorneys spoken with the United States Attorney for the Eastern District of New York?

A Yes.

Q Is that over in Brooklyn?

A Yes.

Q And to your knowledge, their jurisdiction covered the Long Island area?

A Yes.

Q And has the United States Attorney entered into an agreement with your attorney?

A Yes.

Q And pursuant to that agreement, have you agreed to cooperate with the Government?

A Yes.

Q And likewise, has the Government, the U. S. Attorney for the Eastern District of New York, agreed not to prosecute you in connection with that transaction and other transactions?

A Yes.

MR. REILLY: No further questions.

(Continued on page 433.)

THE COURT: You may inquire, Mr. Weinberg.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Wadsworth, with respect to the money that Mr. Ebbecke loaned you, I believe you said it was in February, early March of 1974--

A Late February or early March, yes, sir.

Q You wanted to buy a car, is that correct?

A Yes.

Q You did not borrow that money from the bank from which you were employed, did you?

A I was going to borrow the money from the bank, but there was a little--Mr. Ebbecke had a lease car prior to that and in a conversation a month or two prior to that he said he was getting rid of the lease car and he was going to buy a station wagon and he said it was too bad because it was a very good car and the lease had expired and he was able to buy the car at a very reasonable price, and I indicated to him I might be interested in purchasing it if he didn't want it.

I saw the car.

He said, "Well, there is still a month or two left on the lease. I have the new one. Take this car and meanwhile I'll make arrangements to get the papers together to purchase this car."

I had the car about two or three weeks and I kept asking him, you know, where were the papers, you know, that I could transfer title of the car and actually purchase it, and there was some mix-up with the dealer, I believe it was Fallon Oldsmobile on eastern Long Island, and the dealer couldn't come up with the papers in time and meanwhile time was running out and the car had--was getting--a couple of days prior to an expired plate on it and I didn't want to have my wife driving a car, an illegal automobile, so I said, "Well, I'm going to have to go out and purchase a car."

He said, "Gee, Les, I'm very sorry, all the problems and everything with this car. I'll lend you the money rather than take out a loan, you know, from the bank and have to pay interest on it."

Q The bank did give auto loans, right?

A Oh, certainly.

Q Did you have any other personal loans with the bank at the time?

A No. I had a Master Charge.

Q Isn't it a fact that subsequent to this letter of credit transaction that we have heard testimony about, Mr. Ebbecke had requested repayment on that loan?

A Subsequent to? That means afterwards, right?

Q After.

A Yes, he has.

Q He has? Have you ever repaid the loan?

A No, I haven't.

Q You still owe it to Mr. Ebbecke?

A Yes, I do.

MR. WEINBERG: No further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q How soon after early April 1974 did Mr. Ebbecke contact you to pay that loan?

A September or October.

Q Of 1974 or 1975?

A It was about a year later.

Q And did you receive an inquiry from him or from somebody else?

A I received a letter from his attorney.

Q Was that the first that you had heard from John Ebbecke since that telephone conversation that the loan could ride?

A Well, that was the first I heard in reference to the loan, yes.

Q Did Mr. Ebbecke at any time around early April

1974 tell you that you could forget about the loan?

A Well, it was indicated--it was more or less indicated that, you know, to let it ride meant to forget about it.

Q Forget about paying it?

A Yes.

Q Is that what you understood Mr. Ebbecke to say?

A That was my understanding, yes.

Q Thank you.

MR. REILLY: No further questions.

RECROSS EXAMINATION

BY MR. WEINBERG:

Q Am I to understand that it is your testimony that Mr. Ebbecke said to forget about the loan entirely or to let it ride for a while?

A I don't remember the exact phraseology at the time, but at the time it was my understanding that I could just forget about paying the loan back.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Why haven't you paid him back?

A Why haven't I paid him back?

Q Yes.

A I don't have the money.

MR. WEINBERG: No further questions.

MR. REILLY: None, your Honor.

THE COURT: You are excused, sir. Thank you very much.

(Witness excused.)

THE COURT: Mr. Reilly?

MR. REILLY: Your Honor, the Government rests, but wishes to restate on the record the stipulation that the Manufacturers Hanover Trust Company is a member bank of the FDIC.

THE COURT: Mr. Weinberg, that is stipulated by the defense, is that correct?

MR. WEINBERG: That is correct, your Honor.

THE COURT: Very well.

The Government rests on its rebuttal case.

I indicated to the defense that they would be given leave to proceed with what might be called a surrebuttal or which might be considered a reopening of the defendant's case for certain purposes.

You may proceed at this time, Mr. Weinberg.

MR. WEINBERG: Thank you very much, your Honor.

The defense calls Mr. James Keating.

(Continued on page 438.)

JAMES THOMAS KEATING, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Keating, what is your address, home address?

A 15 Orbit Drive, Stony Brook.

Q You are a neighbor of Mr. Ebbecke?

A Yes.

Q What is your occupation, sir?

A I'm a vice president of a brokerage house, Purcell Graham and Company.

Q Where are they located?

A 61 Broadway.

Q And for how long have you been so engaged with this company?

A Going into my fourth year.

Q For how long have you known Mr. Ebbecke?

A It will be five years this summer.

Q Are you familiar with the character reputation Mr. Ebbecke holds in the Town of Stony Brook.

A Yes, I am.

Q Can you tell us what that character reputation is?

A It's very, very high as far as the community is concerned. He is a member of the volunteer fire department, I know he teaches religious instructions on Saturday to kids.

Mr. daughter is like a child of theirs in their house.

Q Do you know of any adverse--do you know anything in the community that might be adverse to Mr. Ebbecke's character and reputation?

MR. REILLY: Is this the community of Stonybrook we are talking about?

THE COURT: Yes.

A No, I do not, sir.

MR. REILLY: I have no questions of Mr. Keating.

THE COURT: Thank you very much, your Honor.

(Witness excused.)

MR. WEINSTEIN: I call Mr. Kuhn, your Honor.

WILLIAM J. KUHN, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Kuhn, what is your residence?

A It is Stony Brook, 15 Mill Brook Drive.

Q And your occupation, sir?

A I'm an insurance broker.

Q With what concern are you associated?

A Post and Kurtz, Incorporated.

Q What is your capacity with that firm?

A I am vice president of that firm.

Q Where is that firm located?

A It is on 90 Williams Street here in Manhattan.

Q Do you know Mr. John Ebbecke?

A Yes, I do.

Q In the Stony Brook community?

A Yes.

Q For how long have you known him?

A Oh, John I know for about three-and-a-half years.

Q Do you know of his character and reputation in the community?

A Just that it is a very fine character.

MR. REILLY: Your Honor, is this the community of Stony Brook we are referring to?

MR. WEINBERG: Yes.

THE WITNESS: Yes.

Q Do you know anything adverse to Mr. Ebbecke's character and reputation in the community of Stony Brook?

A No, I do not.

MR. WEINBERG: No further questions.

MR. REILLY: No questions, your Honor. Thank you.

THE COURT: Very well. Thank you, sir.

You are excused.

(Witness excused.)

THE COURT: Mr. Weinberg?

MR. WEINBERG: The defense rests.

THE COURT: Very well.

At this time I would inquire of Mr. Reilly, does the Government rest on its entire case?

MR. REILLY: Yes, the Government rests on its entire case, your Honor.

THE COURT: Mr. Weinberg, does the defense rest on its entire case?

MR. WEINBERG: Yes, sir.

THE COURT: Very well.

Ladies and gentlemen, we have completed the taking of testimony and the presentation of exhibits.

We will take a short recess at this time and then proceed to the summations.

Please, although you have seen and heard the witnesses and presented to you in one form or another certain documentary proof, please keep an open mind on all facets of the case until the case has been completed and given to you following my charge and do not discuss the case among yourselves while in the jury room.

I am going to excuse the jury for a 15-minute recess, because we have certain matters to take up and we also will be taking a very brief break.

I trust that we will be resuming at approximately 12:15.

The jury is excused.

(Recess.)

(In open court, jury absent.)

THE COURT: Mr. Weinberg?

MR. WEINBERG: If the court please, the defense at the end of the entire case renews the motion to dismiss and for an acquittal which it made at the end of the Government's case on the same grounds as stated in its original motion.

THE COURT: The motion is denied.

Gentlemen, I am required under the rules to advise you of my proposed charge.

Turning first to the defendant's requests to charge, the court will charge Requests 1, 3 and 4.

In addition, the court will give a charge regarding accomplice testimony.

The court declines to charge defendant's Requests 2 and 5.

Regarding the Government's requests, it is the court's intention not to read the indictment to the jury but, rather, to indicate to the jury that if they wish a copy of the indictment it may be furnished to them and be furnished to them in the jury room.

I would ask the Government or the deputy clerk if they have a clean copy of theindictment so that it will be available if requested.

The court intends to charge Government Requests 2, 3, 4.

However, with respect to request No. 5, I intend to indicate that Mr. LeVien has testified that he did embezzle, purloin or misapply moneys from the Manufacturers Hanover Trust Company and that there would appear to be no dispute about this element of the offense.

The court will charge, in substance, the Goverenment's Requests 6 through 13.

I will charge 14, but do not intend to read the overt acts to the jury.

The court will charge Government Requests 15 through 18.

I will charge 19 in substance, that is, on the defendant's testimony.

I will charge on similar acts in the form of the Government's supplemental request to charge.

I will charge theindictment is not evidence, that it is the jury's province to determine the facts, the jury's recollection controls; I will charge on burden of proof, presumption of innocence and reasonable doubt; I will charge on circumstantial evidence; I will charge that the verdict must be unanimous.

I will indicate to the jury that they have the right, in addition to the indictment, to see the exhibits and have testimony read. I will charge that counsel's questions and remarks are not evidence, and I shall charge on the subject of character testimony.

Is there anything which either counsel would wish to point out to the court at this time?

MR. WEINBERG: If your Honor please, I made a note earlier.

The Government's request No. 2 is a rather lengthy request.

On the second page of that request, I was going to ask the court at least to delete from the charge the characterization of the alleged crime when they refer to it as a greater potential threat to the public interest. That is the first two paragraphs on the second page of request No. 2.

THE COURT: I shall do that.

MR. WEINBERG: Thank you.

THE COURT: Is there anything further?

MR. REILLY: Your Honor, may I understand just exactly what has been deleted? The entire first two paragraphs or just the part that Mr. Weinberg brought attention to.

THE COURT: The entire first two paragraphs, except that I will work in the language, "A conspiracy is sometimes referred to as a partnership in crime."

I shall put that in. I will probably advance it a bit.

MR. WEINBERG: Thank you.

THE COURT: I will probably advance it a little bit prior to the last paragraph, that is, the paragraph on the prior page.

Is there anything further, gentlemen?

MR. REILLY: No, your Honor.

MR. WEINBERG: No, your Honor.

THE COURT: Very well.

(Recess.)

(In open court, jury present.)

THE COURT: Ladies and gentlemen, you will now hear the summations, closing arguments of counsel.

The summations will be presented in the following order.

Mr. Reilly will sum up on behalf of the Government, Mr. Weinberg will then sum up on behalf of of Mr. Ebbecke and, finally, Mr. Reilly will have an opportunity to reply.

After the summations have been completed, we will take a one-hour luncheon recess. You will then return and I will delivery my charge. You will get the case for your consideration sometime this afternoon.

If you reach a verdict this afternoon, so be it. If you do not, it is my intention to send you home for a good night's sleep with an admonition not to discuss the case and with the further admonition that you return in the morning to resume your deliberations.

That is my plan, and my objective is that you can and should deliberate as fully and completely as you feel required, being under no pressure from any source. That will be our program for the rest of the day.

We will proceed now with the closing arguments of counsel.

Mr. Reilly.

MR. REILLY: Thank you, Judge Ward.

Mr. Weinberg, Madame Forelady, ladies and gentlemen of the jury.

I wish to thank you, first of all, for the care and attention that you have focussed on this trial. It has not been the easiest trial because we have dealt with a lot of money, we have dealt with a lot of transactions, we have dealt with a lot of documents for the most part which have not been before you. It is obvious to me, as I am sure it is to Mr. Weinberg, that you have paid careful and close attention to the evidence as it went in.

The evidence is now in and I wish to use this next half hour to review with you the evidence that you have heard in which the Government is asking you to decide this case.

I think it is best, however, that we first start out preliminarily with the indictment.

The indictment in this case, which will be available to you when you go into the jury room if you ask for it, charges in the first count a conspiracy to embezzle funds from the Manufacturers Hanover Trust Company, it charges that Mr. Frank LeVien was an officer of the company and that Mr. John Ebbecke, a bank financial adviser, conspired with him to aid and abet him in embezzling and misapplying those funds.

The period of the conspiracy is from June 1, 1974 to the end of December 1974, the date when Mr. LeVien was fired from his job.

The second, third and fourth counts will allege three specific transactions. I want to review them once again with you.

The second count refers to the date of September 13, 1974, when $75,000, it is alleged, was embezzled from the Manufacturers Hanover Trust Company.

The third count relates to October 31, when it is alleged that $1,500 was embezzled and misapplied from the bank.

And, finally, the fourth count relates to $255,000, a figure you are not likely to forget, which is embezzled or misapplied from the bank and one of its customers on December 5th, 1974.

Now, each of those transactions are transactions which are involved in the conspiracy, so that the evidence which went in on the conspiracy is equally applicable to those separate transactions.

Now, let us review the evidence that we have.

The principal evidence that you heard is the evidence from Frank Levien, the man who can tell you most about these transactions because he knows every one of them in detail because he was the person who was most directly involved, he was the bank officer, he was the man who, for a period of seven months, took the Manufacturers Hanover Trust Company for a $675,000 ride.

That is the first thing you should understand when you try to evaluate Mr. LeVien's testimony.

He is not somebody who is telling you what he thinks he saw or what he observed or what he heard somebody do; he is telling you what actually happened because he was there.

Now, the second question which you are bound to ask, and you are quite proper to ask this, "Well, what did Mr. LeVien, if he is such a bad man, why should we even believe him at all?"

I am going to submit to you this:

There seems to be hardly a motive in the world for Mr. LeVien to come into this courtroom and tell you a story made out of whole cloth to implicate John Ebbecke, a man who has been his friend for three-and-a-half years.

Mr. LeVien entered a plea of guilty to two charges in this indictment or in an indictment or information.

He has confessed and admitted full culpability for the embezzlements involved here. He has been sentenced by Judge Ward to a year and a day in prison and he has been justly sentenced. He has been sentenced to a subsequent period of probation for two years, and if he ever violates that period of probation he will be right back in jail again.

So Mr. LeVien is not waiting for some favorable treatment at sentence. He is not hoping, by singing for his supper, by telling a story that somehow will involve another indictment, another conviction for the Government, that he will somehow be given a lesser sentence.

Well, then, Mr. Weinberg brought out on cross examination.

"Just a moment. What about parole? Do you hope by testifying today here in court to improve your parole situation so that when you go up before the board of parole you might be granted an earlier release?"

Mr. LeVien has told you he has been denied parole and he is not coming up again, he is going to serve his time in prison.

So it would appear to me, and we submit it should appear to this jury, that there is no reason in the world for Mr. LeVien to fabricate a story to implicate a friend, Mr. Ebbecke, for reasons of spite or anything else or reasons of personal advantage.

The only thing that Mr. LeVien has to fear is that if he testifies falsely from that witness chair, he will be subject to perjury.

What did Mr. LeVien say?

Mr. LeVien testified that his problem started a long time ago. It started when he met a fellow named Dash Kalal and he overextended himself with Dash Kalal and made a poor judgment as a banking officer and he was into debt, or at least he had approved debts of $70,000 for Mr. Kalal.

Now, interestingly enough, Mr. Ebbecke had taken over Mr. Kalal as a client and, according to the testimony, had gone over with Kalal to the Pan American Bank, and Ebbecke told Mr. LeVien that he had obtained a $60,000 loan for Mr. Dash Kalal, therefore, when Kalal came in with a $60,000 starter check, wrote it on the Pan Am Bank, deposited it in Manufacturers, Mr. LeVien, trusting Mr. Ebbecke, wrote out a zero delay for that check and subsequently Mr. Kalal wrote worthless checks on Manufacturers for about $60,000 or more because that Pan Am check came back "Insufficient funds."

There were no $60,000.

The problem was discussed with Mr. Ebbecke, and he said, "Well, there is a lack of communication here between myself and Dash Kalal."

Nonetheless, that is outside the period of theconspiracy. We merely show you that this was the source of Mr. LeVien's problem.

He turned to a gentleman by the name of Judd Feinerman, who wrote him out a note, wrote Kalal a note for $50,000 and LeVien agreed to be a co-signer.

Kalal apparently was on his way to Nepal and if the deal went through there would be no problem for $50,000 and the initial $70,000 because he would get the money from Mr. Levy, another good friends and a person he committed himself to.

Dash Kalal died in a plane crash and all those hopes to pay the $70,000 vanished and, indeed, Mr. LeVien did have a problem. Instead of confessing that problem, going to his superiors in the bank, he, for the first time, started a maneuver which eventually evolved into this $675,000 criminal enterprise. He transferred funds of $25,000, then he transferred funds of $50,000 to pay Judd Feinerman.

That was all very good when he had deducted that $50,000 from the Chempar account and switched it over. That covered the existing problem. That satisfied Judd Feinerman. But what was he going to do now? What happened when Chempar called up and said, "Look, I just got my statement back and for some reason there is a $50,000 deduction here"?

He had to do something else, and that is when he turned to John Ebbecke, the defendant in this case.

Now, it is entirely logical that he would talk to John Ebbecke about that and that he would turn to him.

First of all, as I have stated already, it was John Ebbecke's failure to obtain the $60,000 and his apparent misrepresentation to LeVien that he had gotten $60,000 from Pan American Bank that started this problem rolling.

But there is another indicator which suggests, indeed, that Ebbecke did--excuse me, that LeVien did turn to Ebbecke, and that is this:

After all the hot water that LeVien found himself in with his Judd Feinerman note, who apparently does not take no for an answer when he wants to get paid, Frank LeVien undertook, on June 6, 1974, to cosign a note for $10,000 for John Ebbecke from Judd Feinerman. The same type of note, the same obligation that he had with respect to Kalal he was now assuming with respect to John Ebbecke.

Now, what man in his right mind would have done that unless he had some agreement, some understanding that John Ebbecke was going to help him out of this situation?

After having been stung and stung hard by the Dash Kalal loan of $50,000, only a madman or a co-conspirator would sign this note.

And, thus, we have a series of accounts that were introduced into the bank. We started off with Frank Lettieri and his Cellini Furniture Corporation. We then had Andy's Marine Service Company, we had Alpha Scaffolding, we had Ficarra. All of these accounts were in one way or another represented by John Ebbecke, the loan finder.

What about Frank Lettieri's account, the Cellini one?

It is admitted the Cellini account was used

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by LeVien to beat the bank. No question about that.

He got higher ambitions and decided that he would like to move from his apparently middle-class neighborhood, nice as it was, to a $125,000 home out in Plandome, New York, and he used the Cellini account by funneling other funds into that accout and writing checks on it, and this, according to Mr. Lettieri, without his knowledge or cooperation, and according to Mr. Lettieri, with the knowledge and understanding of John Ebbecke because John Ebbecke told him at Gatsby's at a later date.

But why would, why would John Ebbecke stand back and let his Cellini account be plundered in such a way?

The first indication is the $10,000 note that came due on July 8, 1974.

Mr. Ebbecke tried his best to pay off that loan, or at least he made the pretense of doing so. He sent this $10,000 check on the Gramercy Capital check stationery to Judd Feinerman.

Feinerman was pleased, he deposited it.

His bank wasn't pleased, because it came back "Insufficient funds."

"We will put it in again on the 24th of July." It came back "Insufficient funds."

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John Ebbecke did not have the money. He needed the money. And where did he turn? He turned to Frank LeVien, because he knew that he could count on LeVien to help him out in this situation, because now he, Ebbecke, had a problem. And the problem was solved with this cashier's check, this official check made out to Judd Feinerman for $10,000.

Now, Mr. Feinerman did not have any money coming from the Manufacturers Hanover Trust Company, but he did get a call from John Ebbecke and he was told that he was down at the bank, he had the check, "Send a messenger to pick it up," and this check was deposited "For deposit only" for Judd Feinerman in his account.

Where did that money come from?

Mr. LeVien told you it came from the Cellini account.

John Ebbecke told him, "It is all right, you can debit the account, he is going to give me $10,000."

What did Mr. Lettieri say about that, the principal in Cellini Furniture Company?

He said that he did not learn about it until afterwards, and he called Ebbecke and Ebbecke tells him, "Oh, I forgot to tell you, I've taken $10,000 from your account."

This is nice. And Lettieri says, "Well, what for?"

And he says, "Well, it's going to be a payment on the fee you are going to owe me," and that's it.

This was done all without Mr. Lettieri's permission, it was done pursuant to no existing legal obligation because he had already paid Mr. Ebbecke $1,500 for what little work he had done for him so far, and now a $10,000, that bite was taken right out of Cellini.

Perhaps Cellini felt somehow it was going to be covered up. In fact, he was assured by LeVien and by Ebbecke that it would be taken care of, the account would be restored all through these transactions.

LeVien continued to use the Cellini account and other accounts and, as we see, Andy's Marine was used to fill in Cellini's account, then Ficarra was used to fill in Cellini's account.

Frank Leone went down to the bank and asked for $90,000. He originally asked for $150, but they said they will start with $90. There was no question in anybody's mind that it was a $90,000 loan.

Subsequently, he was told that they would have to wait on that additional $60,000.

But in any event, Mr. LeVien immediately, in

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late August, made these very frantic debits from the Leone account, Ficarra Furniture, $60,000 going into Cellini and to Alpha Scaffolding and into Andy's Marine.

So we are just robbing Peter to pay Paul, just as we took money from Chempar to pay Feinerman, then we had to take $52,000 from Cellini to pay Chempar and so it goes along.

This is exactly how the operation worked, a real swirl bath.

But Frank Leone was not going to put up with the fact that his checks were bouncing and a meeting was called at Ficarra Furniture.

John Ebbecke suggested that they might use Alpha Scaffolding, but he did not think they could come up with any better way to solve this problem. Somehow Leone had to be placated, they had to move money in there, because he was not going to allow his account to be abused this way.

Frank LeVien told him, "Well, I am going to have to do something at the bank."

And what was that something?

Well, that something was represented by a $75,000 official check, a check that had been taken out of the funds of Chempar.

Albeit without the direct personal knowledge that it was the Chempar account by John Ebbecke, LeVien was very careful to tell you that, no, he did not tell Mr. Ebbecke that it was from the Chempar account, he said he got it from the bank.

Now, in view of the past history of Mr. Ebbecke's dealings with LeVien, the fact that LeVien was a relatively minor bank officer in the constellation of things, although an important officer, the fact that he was not a millionaire, LeVien did not have any access to any great funds, when LeVien says he is going to give you $75,000, his lending limit, the only possible understanding that Mr. Ebbecke could have is that LeVien took that money from some other account.

If he did not do so, why did it have to be washed through the Gramercy Capital Corporation?

No money was owing to Gramercy Capital by the bank, no money was owing to Gramercy Capital by Frank LeVien, yet a $75,000 check was made payable to the order of Gramercy Capital Corporation. There was no note signed by the Gramercy Capital Corporation for $75,000.

I do not know of a bank that hands out $75,000 if you walked into the bank and asked for it, that they would not ask you to sign a note. They just do not handle transactions that way.

Yet Mr. Ebbecke said he got this check and he just followed instructions.

Even if you take his testimony, he did not follow instructions very well. He said, as the evidence shows--and this very faint and poor copy, nonetheless authentic copy, of the Gramercy Capital check shows he then transferred only $68,000 to Ficarra to help Mr. Leone take care of his problem--not his problem, but the fact that his checks were bouncing, to restore his account.

If he was just following instructions and did not know what was going on, do you think he would bother to chip away money from this $75,000 check?

You might think so if he had the permission of Frank Leone to do so and if he had talked to Frank Leone. But Frank Leone took the stand and corroborated the testimony of LeVien.

There was no such understanding. He just wanted his account to be set square and he did not know anything about this $68,000 deposit, because that deposit, by the way, was made not in his branch but it was made out in Mineola.

Excuse me, it was made back at 42nd Street.

So Leone, who is out in Ozone Park, is not going to have any knowledge of that. His records do not reflect this $68,000 deposit.

Mr. Ebbecke is not above asking for smaller favors, and on October 31, 1974, he gives a call to Frank LeVien, his trusted friend at the Manufacturers Hanover Trust Company and says, "Look, I need some money to cover some checks, it's the end of the month, they are going to bounce. How about transferring $1,500?"

"No problem. Transfer it from one of the accounts."

And, indeed, $1,500 was transferred from Ficarra Furniture to pay to the order of Gramercy Capital, Ltd., $1,500 that was given immediate zero delay. It is appropriate, it is a bank check. But it also happens to pull Mr. Ebbecke out of a very painful or embarrassing position.

If you look at his bank statement for Gramercy Capital for October, as of October 31, the last day of the reporting month, he would have been overdrawn by $1,586.80. This $1,500 check made his account look far more respectable and, of course, the checks he had written within the last days would not bounce.

Enter Karl Koch to the bank. Karl Koch is an important man to enter, because the money is beginning to build up and we need to have a huge source of funds to somehow take care of these funds that had been paid out from other accounts and also to help Alpha Scaffolding, who has been trying desperately to pay off its financing or its obligation to the supplier of the scaffolding. Alpha Scaffolding has been represented, during this period, by John Ebbecke.

Karl Koch had come to John Ebbecke and explained that he had about $600,000 available for investment because he had sold his interest in the family company, and he also told him, in a general way, that he was putting it into certificates of deposit, not through John Ebbecke initially, no.

So it is not surprising, though, that on December 4, Karl Koch is introduced to Frank LeVien, because Mr. Koch, as he testified, was encouraged by Ebbecke to establish a banking relationship.

You do not establish a banking relationship by having lunch at Gatsby's Restaurant, you establish a banking relationship by depositing some money, by showing some sort of good faith with the bank, by showing some ability to pay your debts.

Now, Mr. Koch was not in a business, he was really in investments, so if he wanted to borrow money on a regular basis from Manufacturers he was going to have to put money into Manufacturers.

And on that day, Mr. LeVien testified, and Mr. Koch testified, that $255,000, a check of that amount from Marine Midland, was deposited or given to LeVien. And immediately upon leaving, Mr. Karl Koch stated that he went back to Gatsby's Restaurant and he told John Ebbecke that day, December 4th, 1974, that he had gotten a CD, a certificate of deposit, he had paid $255,000 and he saw Frank LeVien.

Frank LeVien testified the next day he spoke with Ebbecke and he said, "Look, I got the money. What are we going to do with it?"

There had been prior conversations about Karl Koch.

The instructions from John Ebbecke was, "Look, don't buy the CD. We will have to use it some other way."

Because in the world John Ebbecke deals in and the pattern of financing that you have seen so far, you can always cover it up, you can always tell Mr. Koch 30 days later, "Well, here's the money from your CD and here is some interest," you just borrow the interest from some other account.

So there was no problem there.

And what account was most in need? Alpha Scaffolding, because it had been drawn down pretty low because Alpha Scaffolding needed financing.

What is the proof that Alpha Scaffolding-- Mr. Ebbecke had anything to do with this transfer of such a large amount of funds, $255,000, into the Alpha Scaffolding account?

The strongest proof that you have before you is this check for $1,500, a blank check signed by William J. Kitson, a countercheck. That is the only thing that William Kitson signed.

He testified that he gave that check or a couple of checks to Frank LeVien, the officer.

This check, no question about it, ended up in the account of Gramercy Capital. It was not written the words "Gramercy Capital, Ltd., $1,500" by Jack Kitson. He had no knowledge of the check. These words were written out by Annette Giudice, the secretary for Mr. Ebbecke at his direction.

If it was for $10 she would write it for $10, if Mr. Ebbecke told her to write it for $15,000, that is what she wrote. There is no question about this check. This check cannot lie. It was deposited in the account of

Gramercy Capital, Ltd.

What does Jack Kitson say about $15,000 payable to John Ebbecke or Gramercy Capital?

He was devastated when he learned about this. He had no prior knowledge of this, he had no discussions with John Ebbecke about it and he was under no legal obligation to pay him one cent at that time, let alone $15,000.

His arrangement was to pay him a percentage if and when Mr. Ebbecke was able to get that financing.

Now, it is true that Mr. Ebbecke did a lot of work, according to Mr. Kitson. He went out and he reduced their indebtedness by about $200,000 on the condition that the company that made scaffolding was going to be paid right away finally, once and for all, by the end of the year.

That condition never came through, and so Mr. Ebbecke is a businessman, Mr. Kitson is a businessman and I will assure any of us who have had anything to do with business knows that if one side of the bargain does not perform, they are not entitled to a commission, especially when the commission is based upon the amount or volume of money obtained rather than the number of hours spent in trying to obtain it.

Mr. Ebbecke was not an employee. He was an entrepreneur. He took risks. And one of the risks was that he would never get that financing.

So this $15,000, according to the testimony that you heard from the Government witnesses, was stolen, and it suggests and proves more than anything else that Mr. Ebbecke knew, he knew that the $255,000 went into the account.

There is another indication along those lines.

When Karl Koch got so flustered when he could not get ahold of LeVien, he was worried, really, only about the interest rate and paying his taxes at the end of the year, he was not worried about $255,000, he tried to contact John Ebbecke. He left call after call with Ebbecke's office.

Now, Ebbecke always returned the calls to such an important investor like Karl Koch. He did not return these calls, because he knew he would only be faced with an embarrassing situation and he would have to explain, he would have to say, "Well, something is wrong in the mail," and that sort of thing.

Now, Karl Koch did not hear from Ebbecke until January 30, after it was all over, after LeVien had been discharged, after it was well-known.

And what does he say on January 30, a month, more than a month later, after LeVien is discharged?

He said, "Oh, I did not know you were burnt. Gee, two of my other friends got stung. This guy is a crook."

Well, it is completely in character for Mr. Ebbecke to do that, to exculpate, to disassociate himself from Frank LeVien.

That is the testimony of LeVien, that is the testimony that you have heard of corroborating witnesses. Frank Lettieri stated that he did not authorize any $10,000 payment. He also testified that he was present at that Ficarra meeting, as Kitson was present, so that meeting definitely took place on September 13, or thereabouts.

You have the corroborating evidence here for you to consider of all of these checks that went into the pocket of Mr. John Ebbecke.

What about Ebbecke's side of the story?

He has taken the stand, and he, if anything else, has impressed me by his intelligence, by his thorough knowledge of banking procedures, a man who spent almost half of his adult life working for banks. He knows more than anybody else in this courtroom that you just do not get

$75,000 from a bank without any evidence of that indebtedness, that you have to sign notes when an individual or a bank lends you money.

He knew when he borrowed $10,000 from Mr. Judd Feinerman that he had to sign a note and he was going to be held for it.

He tells us in his testimony that he called up Frank LeVien and asked for a loan, personal loan from LeVien and LeVien, being a wealthy man, gave him $1,500, no note--as a matter of fact, he has not even paid it back. A totally implausible explanation.

What does he say about the $75,000 check on the 13th?

He says he got a call from LeVien and he was told "There will be some checks coming, deposit it into the Ficarra account." "Yes, sir."

But he took out--he did not deposit 75, he deposited $68,000, as I have just told you.

What about the $10,000 story? The $10,000 story has been refuted by Frank Lettieri.

Mr. Ebbecke says, "He owed me that money because I was working on several major accounts."

Then he finally took the position this $10,000 was his commission on the $150,000 that LeVien had given to

Cellini Furniture.

The check for $10,000 is dated July 26, 1974.

Let us take a look at the notes that Mr. Lettier signed for Cellini Furniture.

As of July 26, 1974, he had only gotten two notes, one for $25,000 and one for $30,000. He did not get the $52,000 loan until August 19, 1974.

So there was no $150,000 obligation existing as of July 26, the date he got the $10,000. And if this was a commission, $10,000 on 55, that is a pretty good earnings for not much work, almost 20 percent commission.

As for the $15,000, there is no credible explanation for that. He states that it was owing to hi, that Kitson told him, "Well, you take what you need or what you want or what you are entitled to," no specific sum. All of a sudden, a check for $15,000 is written out.

These were though businessmen. Would they hand away $10,000 and $15,000 merely because their money broker, Mr. Ebbecke, says he would like to have some, even though he has not delivered on the goods, he has not delivered the loans?

They do not do that, because they were in a position where they needed money to start off from.

Then you heard from Gerson Fabe about the

$3,150 check. Mr. Fabe testified he went out on a limb for Mr. Ebbecke, he made Ebbecke and LeVien sign a note to that effect, he could not collect from Ebbecke, he turned to LeVien, LeVien testified he paid out the bank check for $3,150 and that he, LeVien, advised, advised Ebbecke he had paid off the loan.

What is the story that Mr. Ebbecke says?

He says, "Well, I saw Fabe sometime next year, he told me thathe paid it off," and he said, "Well, he owed me that because he put me out of business."

That is no legal debt owing. It does not make any sense at all. He has never paid back that money to Frank LeVien. He has not acknowledged any indebtedness of $3,150, he has not acknowledged any indebtedness of $1,500 that he has paid back. He has not paid that money back.

In sum, ladies and gentlemen, the evidence that we have submitted, although it is long, although exhibits are numerous and the proof is complex, the ultimate result is a very simple one to reach.

The evidence points at only one direction and it points to only one individual, it points to John Ebbecke.

Now, the task that you are asked to perform in this jury deliberation period is not whether Mr. LeVien committed this crime and was more guilty than anybody else. That is not your task. We concede, in fact, we put Mr. LeVien on the stand to state to you, to admit to you, to confess to you that LeVien had done the work. He did most of the work. He was the insider. He is the most culpable.

The question that we ask you to focus on is, did Mr. Ebbecke aid and abet him? Did he join him in the conspiracy, or was he totally innocent, totally taken advarnage of, a victim of this entire procedure?

An analysis of the evidence, an examination of the testimony and the documents here will prove to you, we submit, beyond a reasonable doubt, that Mr. John Ebbecke is guilty as charged.

THE COURT: Thank you, Mr. Reilly.

Mr. Weinberg.

MR. WEINBERG: May it please the court, Mr. Reilly, ladies and gentlemen of the jury.

I would like to joint at this time with Mr. Reilly in thanking you for your attention and your patience with the testimony in this case.

Going back to my opening remarks, I told you then and I repeat again that we must examine this case very carefully.

The Government here is accusing Mr. Ebbecke of conspiring with one Frank LeVien to embezzle, abstract or misapply money which was on deposit at the Manufacturers Hanover Trust Company and in aiding and abetting Mr. LeVien in so doing in the specific sums and accounts of $75,000, $1,500 and $255,000.

The Government's main witness against Mr. Ebbecke is Mr. LeVien himself. Mr. LeVien is a confessed felon who is now in jail for stealing almost $700,000 from the very same bank.

Mr. LeVien was an officer at this bank and, as such, he was apparently able to exercise great control of movement of money from one account to another and out of the bank all by himself.

When Mr. LeVien and Mr. Ebbecke first met, Mr. Ebbecke was in the boat business on Long Island. Mr. Ebbecke's firm needed some financing. A small loan was arranged, but apparently not sufficient to save the company and it went under.

When they met again, Mr. Ebbecke was back in the financial consulting business.

LeVien testified that it was at this point that his escapades in crime began, and it was all because of Mr. Ebbecke, according to Mr. LeVien.

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His testimony is, his rationale somehow is that because Mr. Ebbecke was unsuccessful in obtaining a loan for one Dash Kalal at the Pan American Bank, it was then perfectly all right for Mr. LeVien to borrow $70,000 from private parties, Mr. Feinerman and Mr. Levy, to cover a shortage in Mr. Kalal's account.

Then he took it one step further, and it was all right then to take money from the account of Chempar Chemical in the Manufacturers Hanover Trust Company to repay these private loans.

Then Mr. Kalal was supposedly killed in a plane crash.

In Mr. LeVien's own words, he testified, "I decided to manipulate funds to repay the loans."

This was his own idea; nobody else was involved.

You have to note these words very carefully.

He was then off on a scheme of his own.

The logic of Mr. LeVien making Mr. Ebbecke responsible for this action being permissible escapes me.

LeVien then took the money, as he testified, from the account of Chempar Chemical Company, which he conceded no connection whatsoever with Mr. Ebbecke, this was all his own concern. As a matter of fact, when he was brought back on the stand by the Government this morning, he did testify that there was some relationship between himself and Chempar Chemical and they were even looking toward an employee-employer relationship to further their own plans.

At that point, apparently Mr. LeVien discovered that this was pretty easy.

He then said that he told Mr. Ebbecke about the shortage in the Chempar account and that Ebbecke said he would help by bringing in his corporate clients to the bank to borrow money and that LeVien could then deposit that money that was loaned to the clients into these corporate accounts opened at the bank and then LeVien could use the money to help him in his situation.

To me and to my mind, to any reasonable man, the idea of such a scheme, which is so bizarre, is to border on the preposterous.

The Government wants us to believe that John Ebbecke, an experienced banker, told LeVien, "Sure, I'll bring you loan customers, you arrange loans, put the money into their corporate accounts and then you can rip them off as you see fit."

I submit to you that this just does not hold water.

What really happened was that when Ebbecke and LeVien met the second time, when Ebbecke was back in the financial consulting business, LeVien already had his dirty hands in the corporation accounts. He now saw Ebbecke as someone he could use to further his own criminal scheme.

By his own testimony, he stole almost $700,000, a good part of which went to buy his expensive home in Plandome and for whatever prsonal use he put to it.

Apparently he had other people coming in besides Mr. Ebbecke thathe used to generate funds for himself.

As long as he could keep Ebbecke and others bringing in new accounts, he could keep on shifting money around to cover his tracks. He took money from Cellini Furniture to make a down payment on his house. Then he covered that money from money from Andy's Marine and then from Chempar and so far down the line. It turns out to be a real can of worms that Mr. LeVien developed at the bank.

The real question, though, is, what did John Ebbecke have to do with all of this and what did he know about it?

When Mr. LeVien arranged the loan for Andy's

Marine, he, Mr. LeVien, then took that money to cover a shortage which he created in the Cellini account, leaving almost nothing of the proceeds of the loan in Andy's Marine account.

Mr. Ebbecke testified about a week or so after the loan was arranged, he, Mr. Ebbecke, went with Andy Nesbit, the principal of Andy's Marine, to a lawyer's office in Freeport to close a deal on a marina which Andy was leasing with the money he had just borrowed at Manufacturers Hanover.

Ebbecke believed the money was in Andy's account, where it was supposed to be.

We have to ask ourselves, how much could Ebbecke have known about LeVien's manipulations if he went with his client to spend money that LeVien had already taken?

With respect to Ficarra Furniture, the transaction of $75,000, LeVien conceded in his own testimony that he promised a $150,000 line of credit to Ficarra.

Admittedly issued a check through Gramercy Capital is an awkward way to complete the balance of this line of credit, $90,000 of which is already advanced.

The bulk of the money, however, did go to Ficarra after Ebbecke deducted a fee which was due to him.

You must remember that this money came from Chempar, again, which had nothing to do with John Ebbecke whatsoever.

Ebbecke had no way of knowing it was money stolen by LeVien to cover a shortage in the Ficarra account which he, LeVien, had previously created. He had no way of knowing it was coming from Chempar and not moneys advanced by the bank as additional loans to Ficarra.

With respect to fees paid to Mr. Ebbecke, you must not forget that this was his business. This was how he earned his livelihood. He was in the business of obtaining loans for clients.

Even the Government's witness, Mr. Kitson, testified that Ebbecke had done a good deal of work for him and he felt a moral if not legal obligation to pay the fee.

Let us turn out attention now to Count 3 of the indictment, where it is charged that Mr. Ebbecke aided and abbeted Mr. LeVien in misapplying $1,500 from the bank on October 31, 1974.

Both Ebbecke and LeVien testified this was a personal loan that Ebbecke had requested from Mr. LeVien and that LeVien gave him a bank check in that amount.

LeVien testified that he took the money from the Chempar account and that Ebbecke did not know where the money came from. He had no way of knowing. He assumed it was Mr. LeVien's personal funds that he was lending him as a friend.

There is no question that Ebbecke brought his clients to the bank where LeVien worked and that loans were arranged for these companies. That was Ebbecke's business.

But at the same timehe was doing this, he was bringing other customers to other banks. He did not just take all his people and bring them into LeVien so that money could be created and used for LeVien's purposes.

And also at the same time Mr. Ebbecke testified that some of his clients that he brought to Manufacturers Hanover were rejected by Manufacturers Hanover.

What has happened is the Government has taken a series of mostly unrelated transactions and has attempted to weave them together to make a criminal conspiracy out of them. Where the fabric really comes apart is with the Karl Koch transaction.

You heard a good deal of testimony about a luncheon meeting at Gatsby's Restaurant on December 4th, 1974. There is no dispute that towards the end of this meeting, Mr. Koch went to Mr. LeVien at the bank and gave him a check for $255,000 for the purpose of purchasing a certificate of deposit from the Manufacturers Hanover Bank. He got in return from Mr. LeVien a receipt for the check.

Mr. LeVien testified very clearly that Ebbecke had telephoned him prior to the meeting and told him that Mr. Koch had the $255,000 and wanted to buy a certificate of deposit. He even repeated the story on cross examination.

Now, we heard from Mr. Koch very clearly that Ebbecke knew absolutely nothing about the purchase of this certificate of deposit until afterwards. This must lead us to question other aspects of Mr. LeVien's testimony.

As Mr. Reilly said, when Mr. Koch testified that he spoke to Mr. Ebbecke in January 1975, a month after all this broke, Mr. Ebbecke told him, as he testified, that he did not know Mr. LeVien was a crook and that other of his clients were taken as well.

Now, the Government must prove to you that Mr. Ebbecked had prior knowledge of LeVien's activities in order for Mr. Ebbecke to be found guilty. The court will charge you as to the law very clearly and very precisely on this point.

However, we have here a situation of one

Government witness contradicting the chief Government witness on this very issue.

As to which of the witnesses you are going to believe, that is a choice that you are going to have to make. If I had the choice to make, I would have very little difficulty in choosing which witness I would believe.

You also heard Mr. Lettieri testify that at a meeting held at Ficarra Furniture, Mr. Ebbecke is alleged tohave said that it was all right to transfer $25,000 from the Alpha Scaffolding account to cover a shortage in the Cellini account. He also said that Mr. Kitson, president of Alpha Scaffolding, was there, and did not object.

You later heard Mr. Kitson testify that he was there and he never heard of such a thing and, furthermore, that if he did hear of such a thing, he certainly would have objected. He would have been crazy not to.

There is another contradiction of one Government witness by another Government witness, and I ask you, which version makes sense?

You also heard Mr. LeVien testify that he had Mr. Kitson give him a check payable to cash for $2,000 drawn on the Alpha Scaffolding account.

Mr. LeVien claimed then to have cashed the check and given the money to Mr. Kitson to be given to Mr. Ebbecke.

Mr. Ebbecke on the witness stand denied ever receiving any of that money.

The Government had Mr. Kitson on the witness stand and it is interesting to note that they never asked him about giving that money to Mr. Ebbecke. They had the opportunity.

What we really end up with is a series of transactions interconnected only by Mr. LeVien's manipulations inside the bank, but insufficient to be a scheme or a plan of any sort between LeVien and Ebbecke.

LeVien was a criminal. He took a huge amount of money for his own use. In furthering his schemes, he used Mr. Ebbecke, as well as others. Mr. LeVien got an awful lot of money out of all this. He testified that he, I think, took at least or around $670,000, which is an awful lot of money.

What did Mr. Ebbecke end up with? Fees that he earned through the course of his business and a few relatively small personal loans.

Now, Mr. Ebbecke may not have been very smart, but that is not a crime. He may not have chosen his associates very well, but that is not a crime, either.

What Mr. Ebbecke did not do was to knowingly or willfully commit any crime or conspiracy or aid or abet Mr. LeVien or anybody else in the commission of a crime.

I respectfully submit, I am confident, after listening to the court's charge and considering all the evidence, that you will return a verdict of not guilty.

I thank you all for your attention.

THE COURT: Thank you, Mr. Weinberg.

Mr. Reilly?

MR. REILLY: Thank you, your Honor.

I have a very short rebuttal to those remarks by Mr. Weinberg.

First of all, he has pointed to some contradictions in the testimony by Government witnesses. He asks you to contradict the testimony of Frank LeVien and Karl Koch, that there was no--and he claims that you can conclude from that that there was no prior knowledge by John Ebbecke about this $255,000 deposit into the Alpha account.

There is nothing innocent in that testimony. Mr. LeVien testified that he got the call from Mr. Ebbecke that there would be some money coming in from this person, Karl Koch, and that it should be deposited elsewhere.

Mr. Karl Koch testified that he had discussed the investment of CD's with Mr. Ebbecke, not this particular investment and not this particular transaction that day. He did not tell Mr. Ebbecke that he had gone down to Marine Midland and had a check for $255,000. But that, as a practical matter, does not really amount to anything, because immediately after leaving Gatsby's, before the money, the day before the money was misapplied to the funds of Alpha Scaffolding, Karl Koch told John Ebbecke everything about that CD.

So when Mr. Ebbecke and Mr. LeVien were on the telephone the next day, Mr. Ebbecke was in a position to tell him, "Put it in the Alpha account."

A second inconsistency is that between Frank Lettieri and Jack Kitson.

As you recall, Mr. Kitson's testimony was not too clear on the point as to what went on at Ficarra Furniture store and he did not remember it happening, but he said he did not remember too much about the meeting because after a while he went out looking for some Spanish furniture for his wife.

Perhaps Mr. Lettier was mistaken in remembering that Jack Kitson was there and did not say anything. He remembers there was nothing said, but perhaps it was because Mr. Kitson had stepped out of the room and was looking at the Spanish furniture for his wife.

But the essence of Mr. Weinberg's closing remarks to you is that his client did not have any knowledge of what was going on, that he did not knowingly and willfully participate in this scheme.

I ask you, in evaluating that claim, to consider the testimony of the last two witnesses that you heard on the stand, Lester Wadsworth and David Kaplan, and I ask you to re-examine these exhibits, and you make up your mind about whether Mr. Ebbecke was a victim or whether he had full knowledge of what was going on at the Manufacturers Hanover Trust Company.

THE COURT: Thank you, Mr. Reilly.

Ladies and gentlemen, it is 1:20 p.m.

I am going to excuse you for lunch for one hour.

Please do not discuss the case among yourselves, keep an open mind on all facets of the case until the case has been given to you following my charge.

In the event you should learn anything about the case from any source outside of this courtroom during the recess, you are directed to report the matter to me at once promptly upon your return.

Finally, please keep an open mind on all facets of the case until it is given to you following my charge, which will be delivered beginning immediately after the luncheon recess

The jury is excused and directed to return at 2:20 p.m.

Enjoy your lunch.

(Luncheon recess.)

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AFTERNOON SESSION

2:25 p.m.

(In open court, jury present.)

THE CLERK: The Court is about to charge the jury.

Any spectators wishing to leave will do so now or rema seated until the Court completes his charge.

Will the marshal please lock the door.

THE COURT: Ladies and gentlemen of the jury.

It is the custom in this court that the juror seated in seat No. 1, in this case Clara Queen, will act as the foreperson of the jury.

The function of the foreperson is to tally the vote of the jurors. In addition, if, during the course of the jury's deliberations, any requests are made to the Court, it is the function of the foreperson to see to it that these requests are written out on paper. Paper and pencils will be supplied to the jury. And after the request is written out, the request will be sent out to me. After I receive it, I will review it with counsel and attempt, wherever possible, to respond to the jury's request or question as promptly as I can.

Members of the jury.

You are about to enter upon your final duty, which is to decide the fact issues in the case.

While numerous witnesses have testified and numerous exhibits have been received in evidence, actually the fact issues that you are going to be called upon to decide fall within a fairly narrow compass.

You are to perform your final duty in a complete attitude of fairness and impartiality. You are to appraise the evidence calmly and deliberately and, as was emphasized by me at the time you were first selected as jurors, without the slightest bias or prejudice for or against the Government or the defendant as parties to this litigation.

Let me add that the fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to the litigation. By the same token, it is entitled to no less consideration.

All parties, Government and individuals, stand as equals at the bar of justice.

I have said before and I say again, you, ladies and gentlemen, are the sole and exclusive judges of the fact. You pass upon the weight of the evidence and you and you alone determine the credibility, that is, the believability of witnesses. You resolve whatever differences there may be in the testimony and you draw whatever reasonable inferences you may find warranted by the facts as you determine them.

My function at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you find them. The logical result of that application is the verdict in this case.

With respect to any fact matter, it is your recollection of the evidence and yours alone that governs. Anything that counsel either for the Government or for the defendant may have said with respect to matters in evidence or as to any factual matter, whether stated in a question, in colloquy, that is, argument with the Court, in argument at any time, in the opening statements or in summations, is not evidence and is not to be substituted for your own recollection of the evidence.

So, too, anything that the Court may have said during the trial or may refer to during the course of these instructions as to any factual matters in evidence is not evidence and is not to be taken in substitution of your own recollection as to any factual matter.

The case must be decided, and this I told you at the time of your selection as jurors, upon the sworn testimony of the witnesses, any stipulations entered into between counsel and such exhibits as were received in evidence.

During the course of the trial, you have observed that from time to time counsel made objections to the asking of certain questions, to the admission of certain items offered in evidence and you heard motions to strike or to limit testimony being made by one or another of the attorneys.

It is in this manner, through such objections and motions, that questions of law are raised in our trial procedure, and they affect you, the jury, not one bit.

You remember I told you that the law of the case is the prerogative of the Judge and not of the Jury, and so to each of these objections I made a ruling which was a decision on the law. You must not concern yourselves in the slightest with what I said or what you think I meant by any of these rulings, because these are matters of law for which I take all responsibility as the trial Judge.

Neither the objections nor motions made by counsel on either side nor the rulings made by me are to enter into your deliberations, except to the extent that I have instructed you to disregard certain evidence which I have ordered stricken.

You are not to permit yourselves to be influenced at all either by the language or the manner of counsel in stating these objections or applications or by the words or the ways of the Court in ruling on them.

You will be able, should you request them, to have a copy of the indictment and any exhibits received in evidence sent into you in the jury room, and should you have any questions or doubts as to what was said by a particular witness when he or she testified, you may send out a note and request that the testimony of that witness, or such portion of it as you wish to reconsider, be read back to you. In that event, I will convene court, you will come out and listen as the court reporter reads from his notes whatever testimony you specifically request.

Before we consider the precise charges contained in the indictment, some preliminary observations are in order.

The indictment upon which Mr. Ebbecke was brought to trial is merely an accusation, a charge. It itself is no proof or evidence of the defendant's guilt. No weight is to be given by you to the fact that a grand jury returned an indictment against the defendant.

Mr. Ebbecke has pleaded not guilty and, thus, the Government has the burden of proving the charges against him beyond a reasonable doubt.

It is a burden that never shifts and remains upon the Government throughout the entire trial.

The defendant does not have to prove his innocence under our system of law. On the contrary, under our system, he is presumed to be innocent of the charges contained in the indictment. This presumption of innocence was in his favor at the start of the trial, continued throughout the trial and is in his favor as I instruct you at this point, and even continues in his favor during the course of your deliberations in the jury room. It is removed only if and when you, the members of the jury, are satisfied that the Government has sustained its burden of proving the charges beyond a reasonable doubt.

Now, what is a reasonable doubt?

A reasonable doubt is such a doubt as would cause you to hesitate to act in a matter of importance in your own lives. It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense and your experience.

Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginative qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of a defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason for that is in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, is not susceptible of mathematical certainty.

In consequence, the law is such that in a criminal case it is enough if proof that a defendant is guilty is established beyond a reasonable doubt, not beyond all possible doubt.

If, after a fair, impartial and careful consideration of all the evidence, you are convinced of the guilt of the defendant on any count beyond a reasonable doubt, you must convict the defendant on that count.

If, on the other hand, after such a fair, impartial and careful consideration of all the evidence you do not believe that the Government has proved the guilt of the defendant beyond a reasonable doubt on a particular count, you must acquit the defendant on that count.

As I will tell you later, you will consider the case count by count considering each of the four counts separately.

I turn now to the indictment in this case.

As I have indicated, the indictment contains four counts. Each count charges a separate crime.

Let us turn to the specific charges against Mr. Ebbecke.

Count one charges a conspiracy. It charges that Mr. Ebbecke, together with Frank W. LeVien, and with others to the grand jury known and unknown, conspired to violate federal law.

I shall refer to this count as the "conspiracy count."

Counts 2, 3 and 4, the remaining counts in the indictment, I shall refer to as "substantive counts."

In Counts 2, 3 and 4, the so-called "substantive counts," Mr. Ebbecke is charged with aiding and abetting Frank W. LeVien to embezzle and misapply funds of the Manufacturers Hanover Trust Company. The amounts embezzled are:

Count 2, $75,000.

Count 3, $1,500.

And Count 4, $255,000.

A conspiracy to commit a crime as charged in Count 1 is an entirely separate and distinct offense from the substantive crime which is the objective of the conspiracy.

A conspiracy is sometimes called a "partnership in crime." The essence of the crime is an agreement or understanding to violate other laws. Thus, if a conspiracy exists, even if it should fail of its purpose, it is still punishable as a crime. Consequently, in a conspiracy charge, there is no need to prove an actual violation of federal law.

Since the essential elements which the Government must prove before a conviction may be had on any substantive count are different from the essential elements of the crime of conspiracy, we shall consider each separately.

I believe it will be somewhat clearer for you if we first discuss the substantive counts, that is, Counts 2, 3 and 4, and later I will come back and discuss the conspiracy count, that is, Count 1.

Counts 2, 3 and 4 of the indictment charge the defendant, John M. Ebbecke, with separate violations of Title 18, United States Code, Section 656.

You must consider each of these counts separately.

Turning first to Section 656 of Title 18, United States Code, that section provides, in pertinent part, as follows:

"Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve Bank, national bank or insured bank...embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds, assets or securities entrusted to the custody and care of such bank," is guilty of a crime.

As used in this sense, the term "insured bank," includes any bank, banking association, trust company, savings bank or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

In addition, you will be asked to consider Section 2 of Title 18, United States Code, which makes it a crime to aid and abet another to violate the law. That section reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

In order to find Mr. Ebbecke guilty on any of the three substantive counts, that is, Count 2, Count 3 or Count 4, you must find each of the following beyond a reasonable doubt.

I am going to now set forth the five elements that you must find beyond a reasonable doubt.

First, that on or about the date set forth in that count of the indictment, in the Southern District of New York, Frank W. LeVien embezzled, abstracted, purloined or misapplied money, property or securities of a value greater than $100 entrusted to the custody or care of the Manufacturers Hanover Trust Company.

Second, that when Frank W. LeVien did the prohibited acts, he was an officer or employee of the Manufacturers Hanover Trust Company.

Third, that the Manufacturers Hanover Trust Company was then insured by the Federal Deposit Insurance Corporation.

Fourth, that Mr. Ebbecke aided and abetted Mr. LeVien in the commission of the offense.

Fifth, that both Mr. Ebbecke and Mr. LeVien acted knowingly and willfully.

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In considering the first of the five elements under Count 2 and then Count 3 and then Count 4, you must first find that Frank LeVien embezzled, abstracted, purloined or misapplied moneys, property or securities entrusted to the custody or care of the Manufacturers Hanover Trust Company.

Mr. LeVien has testified that he did this and there would appear to be no dispute about this element of the offense.

The second element of the offense charged in Counts 2, 3 and 4 requires that you find that Mr. LeVien was an officer or employee of the Manufacturers Hanover Trust Company at the times involved.

Mr. LeVien has testified that he was an assistant vice president of the bank during most of 1974, so there would appear to be no dispute about this element oftheoffense.

As to the third of the five elements, there is also no dispute. The parties have stipulated that the Manufacturers Hanover Trust Company is and was insured by the Federal Deposit Insurance Corporation.

Now we turn to the fourth and fifth elements.

You will recall that I indicated a few moments ago that the fourth element for you to find was that

Mr. Ebbecke aided and abetted Mr. LeVien in the commission of the offense.

It is not necessary to show that a defendant physically committed the crime himself.

You will recall that Section 2 of Title 18, United States Code, which I read to you, provided that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find the defendant guilty of the offense charged in Counts 2, 3 and 4 if you find beyond a reasonable doubt that someone else committed the offense and that the defendant aided and abetted him.

Thus, if you find beyond a reasonable doubt that Frank W. LeVien committed the offenses charged in Counts 2, 3 and 4 and that Mr. Ebbecke aided and abetted him, then you may find Mr. Ebbecke guilty under Counts 2, 3 and 4, provided you find the other elements beyond a reasonable doubt.

In order to find Mr. Ebbecke guilty of aiding and abetting Mr. LeVien, you must find that he had knowledge of Mr. LeVien's criminal activity and that he encouraged or participated in it.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions:

Did he associate himself with the venture?

Did he participate in it as something he wished to bring about?

Did he seek, by his action, to make it succeed?

If he did, then he is an aider and abetter.

I turn to the fifth and final element which you must find beyond a reasonable doubt in connection with your consideration of Counts 2, 3 and 4, and that is that both Mr. Ebbecke and Mr. LeVien acted knowingly and wilfully.

An act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident, mere negligence or other innocent reason.

An act is donewilfully if it is done knowingly and deliberately.

"Wilfull" does not mean that the defendant, in addition to knowing what he is doing, must also know that he is breaking the law. There is an old saying, "Ignorance ofthe law is no excuse."

So there you have the five elements which, when taken together, constitute the elements of the crimes charged in Counts 2, 3 and 4.

Having considered the three substantive counts, we now turn to the conspiracy count, Count 1.

In order to find Mr. Ebbecke guilty of conspiracy as charged in the first count of the indictment, you must find beyond a reasonable doubt:

First, that at some time during the period from on or about June 1, 1974 to when the indictment was filed, which was October 28, 1976, an agreement existed between Mr. Ebbecke and Frank W. LeVien.

Second, that it was an object of this agreement for Mr. Ebbecke and Mr. LeVien to embezzle, abstract, purloin and misapply funds of the Manufacturers Hanover Trust Company.

Third, in order to find the defendant guilty of the crime of conspiracy--you will recall that I instructed you that guilt was personaland to the extent I did not I do it now--you must find that Mr. Ebbecke knowingly associated himself with the conspiracy and participated in it.

And, fourth, thatone of the conspirators, and it need not be the defendant on trial, knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

Let us go back.

What is a conspiracy?

A conspiracy is a combination or agreement of two or more persons by concerted action to accomplish a criminal or unlawful act by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendant and his alleged co-conspirator accomplish what it is alleged they conspired to do is immaterial to the questionof guilt or innocence.

A conspiracy, as I have noted, has sometimes been called a "partnership in criminal purposes in which each member becomes the agent of every other member." However, to establish that a conspiracy existed, the Government is not required to show that two or more persons sat around a table and enteredinto a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plans, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator.

Indeed, it would be extraordinary if there were such a formal document or specific oral agreement.

Your common sense will tell you that when men, in fact, enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreement to writing or acknowledge their plans before a notary public, nor do they publicly broadcast their plans. From its very nature, a conspiracy is almost always characterized by secrecy, rendering detection difficult.

Thus it is sufficient if two or more persons, in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

On the other hand, proof concerning the accomplishment of the objectives of a conspiracy may be the most persuasive evidence of the existence of the conspiracy itself.

To simplify this perhaps a little bit more, success in carrying out the objective of the venture, if you believe it was successful, is the best proof of the venture or of the agreement.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose.

The adage, "Actions speak louder than words," is applicable here.

Usually the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing from them, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all the evidence, direct and circumstantial--and I will come back to those two words in a moment or two--you find beyond a reasonable doubt that the mind of at least two of the alleged conspirators, that is, any two, if you find that the minds of these two men met in an understanding way and they agreed as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is established.

Again, it is not necessary for the Government to prove the success of a conspiracy in order to establish a violation of the conspiracy statute. As a conspiracy is basically an agreement to violate the law, it may exist even though the final objectives were never accomplished.

The indictment here charges that the conspiracy existed from on or about June 1, 1974 and continuously thereafter, up to and including the date of the filing of the indictment which is on trial before you, that is, October 28, 1976.

You need not find that the conspiracy began and ended exactly on those dates.

It appears from the evidence that Mr. LeVien was no longer employed by the Manufacturers Hanover Trust Company after the last week of December 1974 and, thus, was not in a position to embezzle bank funds after that time.

If you find that at some time during the period set forth in the indictment the alleged conspiracy existed, that will be sufficient.

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding whether the defendant was a member of a conspiracy, you should consider whether, on all the evidence, the defendant knowingly and purposely entered the conspiracy. In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

I suggest to you that knowledge--and knowledge isnecessary here--is a matter of inference from facts proved. Science has not devised a way to permit us to enter a man's mind to know exactly what he knows or what he thinks.

However, you do have before you evidence of certain acts on the part of the defendant and the Government contends that these acts show beyond a reasonable doubt knowledge on the part of the defendant of unlawful purpose.

It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify any inference of knowledge on his part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of these unlawful ends.

Where a substantive offense required specific knowledge, that same knowledge must be established before a defendant can be found to be a member of a conspiracy to commit the offense. This applies equally to an aider and a[illegible] as to a conspiracy and the requisite knowledge canno[illegible]mputed from one aider and abetter or conspirator to another.

In order to sustain a judgment of conviction on a charge of conspiracy to violate a federal statute, the Government must prove at least the degree of criminal intent necessary for the substantive offense.

Once you have found the conspiracy to exist and the defendant to have knowingly participated in it, the extent of his participation has no bearing on his guilt or innocence.

The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated to a degree more limited than that of his co-conspirators, he is equally culpable, so long as he was, in fact, a conspirator.

Now we come to the fourth element you must consider, assuming that you have found that the conspiracy existed and had as its objective the embezzling of funds from the Manufacturers Hanover Trust Company, and that is the requirement of what is called an "overt act."

You may not find a defendant guilty of conspiracy unless and until you are convinced that at least one overt act as charged in the indictment was committed by at least one of the conspirators.

The offense of conspiracy is complete when the unlawful agreement is made and any overt act is done by a conspirator to effect the object of the conspiracy. Hence, the overt act required is one which furthers the objectives or purposes of the conspiracy.

It does not have to be a criminal act or an act which of itself constitutes an objective of the conspiracy. It may be an act which is innocent on its face, but it must be of such a character that it furthers or promotes or aids and assists in accomplishing a purpose of the conspiracy.

It is not necessary for you to find that all of the alleged overt acts charged in the indictment were committed, nor is it necessary that an overt act implicate the defendant on trial before you, nor do you have to find that both Mr. LeVien and Mr. Ebbecke had something to do with the overt act committed.

It is enough if you find that at least one of the named overt acts charged in the indictment was committed by any one of the conspirators in furtherance of the conspiracy.

Ten overt acts are charged in the indictment. They are enumerated beginning on page 3 of the indictment under the heading "Overt Acts," and they begin with the number 8 and they proceed from 8(A) through (J) on that pageand the succeeding page of the indictment.

I will not read them. You may request the indictment when you retire to consider your consideration of the case.

I do instruct you, however, that the Government must prove that at least one of these ten alleged overt acts was committed in furtherance of the conspiracy in the Southern District of New York.

I would indicate to you that such locations as the 42nd Street and Madison Avenue branch of the Manufacturers Hanover Trust Company and Gatsby's Restaurant are located within the Southern Distrct of New York.

So I say to you, again, that the Government must prove that at least one of the ten alleged overt acts was committed in furtherance of the conspiracy in the Southern District of New York.

I mentioned that a conspiracy sometimes was called a "partnership in crime." And just like other partnerships, when people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one person made in the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all and all are responsible for such acts.

Therefore, if you find in accordance with these instructions that the alleged conspiracy existed and that the defendant, Mr. Ebbecke, and the alleged co-conspirator, Mr. LeVien, were participants in it, then acts done and statements and declarations made in furtherance of the conspiracy by Mr. LeVien may be considered against Mr. Ebbecke, even though such acts or declarations were made in the absence and without the knowledge of Mr. Ebbecke.

It is important to note that this principle applies only to acts and declarations done or made during the continuance of the conspiracy and in furtherance of it, that is, designed to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

An act is done knowingly if it is done

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voluntarily and purposely and, as I said earlier, not because of mistake, accident, mere negligence or other innocent reason.

An act is done wilfully if it is done knowingly and deliberately.

Neither "knowing" or "wilful" means that the defendant, in addition to knowing what he is doing, must also suppose that he is breaking the law. I pointed that matter out before and I refer you, again, to the adage, "Ignorance of the law is no excuse."

Knowledge of the kind which must be proven in this case--and that applies to the conspiracy count and to the earlier substantive counts--knowledge of a kind which must be proven in this case is not something you can see with the eye or touch with the finger. It is seldom possible to prove it by direct evidence.

You should take into consideration not only direct evidence, but all of the facts relating to the defendant's connection with the events in question so far as they may have been disclosed by the testimony and the reasonable inferences to be drawn therefrom.

In other words, it may be a matter largely based upon what is called "circumstantial evidence," which is equally reliable and sometimes more so than direct evidence.

As I said, I am going to come back to a discussion of direct and circumstantial evidence in just a couple of minutes.

You may consider, in determining whether a defendant acted with guilty knowledge or intent, the fact , if you find it true, that the defendant engaged in other transactions similar to those charged in the indictment.

The testimony and evidence offered by the Government on its rebuttal case this morning relates to events which are similar but unrelated to the charges in the indictment.

This evidence, according to the Government, relates to Mr. Ebbecke's dealings in a financial transaction involving the Hempstead Bank during March and April of 1974. This evidence was admitted, as I instructed you at the time, for a very limited purpose. You may consider it during your deliberations only insofar as it bears on the issue of Mr. Ebbeck's knowledge and intent with respect to the events charged in the indictment.

In determining whether a defendant acted with guilty knowledge or intent, you may consider the fact, if you find it to be true, that the defendant engaged in other transactions similar to those charged in the indictment. You are not to consider this rebuttal testimony and evidence for any other purpose.

A few words about the nature of the evidence.

The law recognizes two types of evidence, direct and circumstantial, upon which jurors may rely to find an accused guilty of a crime.

Direct evidence is where a witness testifies to what he saw or heard, what he knows of his own knowledge, something which comes to him by virtue of his senses.

Circumstantial evidence is reasoning from a fact which is proved to the ultimate fact which is sought to be established.

In simple terms, you reason from an established fact to another fact. The established fact or circumstance must have a reasonable tendency to show and from which you may rationally and logically infer the ultimate fact to be established.

I am going to give you an example in a moment which I think will clear this up in the minds of anyone who may have some question.

I charge you that circumstantial evidence, if believed, is of no less value than direct evidence, for

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in any case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

I have sometimes suggested to jurors the following example which may give you a better idea of what is meant by "circumstantial evidence."

Assume, as was the case, that when we entered the courtroom this afternoon there was bright sunlight and it was a clear, bright day. Assume further that you are sitting in your jury box as you are at this moment, that the blinds across the way from you are closed, that there are drapes over the blinds and you cannot see out so you cannot observe the weather conditions outside.

Assume that after having been sitting here for a while you observe a person walking into the courtroom with an umbrella that was dripping wet, then that person was followed by another person wearing a raincoat which was also wet. Then perhaps, as you sat in the jury box, you heard the beat of something against the window.

If I ask you as a fact, "Can you see if it is raining outside?" you would have to say "No." You knew as a fact it was dry with the sun shining when you came in. Yet, if I ask you if it is raining outside, even though you could not see outside, you would be justified on the basis of common experience, with those two people walking in and the beating against the windows, in saying that it was raining even though you could not directly see it.

You reason from facts, that is, what you see and hear, to the ultimate fact. That is all that circumstantial evidence is all about.

If the reasonable inferences to be drawn from any evidence, direct or circumstantial, lead to two conclusions, one favoring innocence and the other favoring guilt, then it is your duty to accept that which favors innocence. That would be so since each inference is logical and reasonable. Then the defendant is entitled to the benefit of the doubt.

Guilty knowledge, and especially attempted fraud, rarely can be shown by direct evidence, as I have indicated previously. Usually they are established by circumstantial evidence.

Knowledge and intent, when in the mind of another, is subjective, what is in that person's mind. You must look at the evidence, ladies and gentlemen, direct and circumstantial, to determine what knowledge one had or with what intent one had committed a charged act.

Conduct of a defendant, including documents prepared by him or at his direction, may be considered in the light of other evidence in the case in determining an accused's guilt or innocence.

I now turn to your primary function, which is to determine where the truth lies.

How do you determine where the truth lies?

I mentioned at the start of the trial that it was important for you not only to listen but to look at andobserve each witness as the witness testified. Your determination of the credibility of the witness very largely depends upon the impression that the witness made upon you at the time of testifying as to whether the witness was giving an accurate version of what occurred.

I sometimes say to jurors, when you walk into this courtroom and sit in the jury box while the trial is going on or while you are deliberating in the jury room, you have with you your common sense, your good judgment and your life experience.

The degree of credibility to be given to a witness should be determined by his or her demeanor, his or her relationship to the controversey and the parties, his or her bias and impartiality, the reasonableness of the witness' statements, the strength or weakness of the

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witness' recollection, viewed in light of all other testimony and the attendant circumstances.

At times a witness may testify that an event occurred or that he or she observed something. You will note from experience that the manner of speaking is such that we can draw the conclusion that the truth is something other than what the witness stated, but what you do is evaluate the testimony of a person giving evidence, you evaluate the person's demeanor, you size up that person pretty much as you do when you are trying to decide whether someone is giving you an accurate version of an occurrence.

You accept, you reject as you would if you were on the outside in your everyday dealings.

The ultimate question with respect to each witness always is, did that witness tell the truth when the witness appeared before you?

The law permits, but does not require, a defendant to testify in his behalf. The defendant did testify. You must determine how credible his testimony is. Obviously the defendant has a deep interest in the result of the case. It is fair to say that he has the greatest stake in the outcome of a case in which he is the defendant.

Interest creates a motive for false testimony. The greater the interest, the stronger the motive, and a defendant's interest in the results of a trial is of a character possessed by no other witness.

In appraising the defendant's credibility, you may take that fact into consideration. Yet it does not follow simply because a defendant has this great interest in the result of a case that he is not capable of telling a truthful story. It is for you to decide to what extent, if at all, a defendant's interest has affected or colored his or her testimony. It is simply a factor that you may take into account in passing on his or her credibility.

In connection with the question of credibility, I want to bring to your attention one of the rules of this court which relates to the testimony of an accomplice.

You must realize, I am sure, that in the prosecution of a crime the Government is frequently called upon to use witnesses who are accomplices. Often there is no choice. This is particularly so in cases of conspiracy. Frequently it happens that only the members of the conspiracy have evidence which is relevant to and is important in a case.

There is no requirement in the federal courts that the testimony of an accomplice be corroborated. Conviction may rest on the uncorrobrated testimony of an accomplice if you believe it and find it credible.

But an accomplice's testimony should be closely examined and weighed with great care.

If you find that any witness--and this applies to all witnesses--wilfully testified falsely as to any material matter, you have the right to reject the testimony of that witness in totality or to accept that part or portion which commends itself to your belief or which you may find corroborated by independent testimony in the case.

Mr. Ebbecke, at the end of the trial, introduced evidence of his good reputation in his community prior to his indictment in this case. Such evidence may indicate to you that it is improbable that a person of good character would commit the crimes charged. Therefore, you should consider this evidence along with all the other evidence in the case in determining the guilt or innocence of the defendant.

The circumstances may be such that evidence of good character may alone create a reasonable doubt of the defendant's guilt, although without it the other evidence would be convincing.

However, evidence of good reputation should not constitute an excuse to acquit the defendant if you, after weighing all the evidence, including the evidence of good character, are convinced beyond a reasonable doubt that the defendant is guilty of the crimes charged in the indictment.

As I said before, you are to consider each of the four counts separately. You are to consider each count as if it were the sole charge against the defendant.

The Government, to prevail, must prove the essential elements of each alleged crime beyond a reasonable doubt. If the Government succeeds in proving the essential elements beyond a reasonable doubt, your verdict should be "Guilty." If it fails, your verdict should be "Not guilty."

Thus, you may find the defendant either guilty on all four counts or you may find him not guilty on all four counts, or you may find him guilty on some counts and not guilty on others.

The verdicts on each count must be unanimous.

Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely on the basis of the evidence and my instructions on the law.

As I said earlier in the trial, under your oath as jurors, you cannot allow a consideration of the punishment which may be inflicted upon a defendant if convicted to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely on the basis of such evidence and the law as I give it to you.

You must not be influenced by any assumption, conjecture or sympathy or inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt thatthe law has been violated, you should not hesitate for any reason to find a verdict of not guilty.

But on the other hand, if you find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Each of you is entitled to his or her own opinion. What you are required to do is to go into the jury room, assemble around the table, exchange views with one another, consider the evidence, listen to the arguments of your fellow jurors, present your own views, consult with one another and reach an agreement that is a verdict solely and only on the evidence and in accordance with the instructions of law which I have given.

If you should have a point of view which differs from that of a fellow juror or jurors, you should listen to argument based on the evidence with an open mind, and if you are persuaded that your point of view should yield on the evidence, there is no reason why you should not change your mind.

However, ladies and gentlemen, your final vote must reflect your own conscientious judgment as to how the case should be decided.

I have finished my charge. I will at this time see counsel at the side bar. But first, I will inquire whether jurors 1 through 12 are all feeling well, both mentally and physically, and each of you jurors 1 through 12 feel that you can deliberate fully and fairly on the case, for if anyone does not feel well and fit either physically or mentally, let him or her raise his or her hand at this time and we will deal with the matter in an appropriate fashion.

Are there any among the 12 jurors who are numbered 1 through 12 who do not feel that they can fully and fairly deliberate on this case? If so, please raise your hand.

I see no hands. Therefore, I will ask Jurors 13 and 14, the two alternate jurors, to proceed to the jury room while I am speaking to the attorneys at the side bar to reclaim their belongings, because you are going to be excused just as soon as I send Jurors 1 through 12 in to begin their deliberations.

I will see counsel at the side bar.

(Two alternate jurors were excused.)

(At the side bar.)

THE COURT: Mr. Reilly, are there any exceptions?

MR. REILLY: Your Honor, no, there are no exceptions.

However, I do--

THE COURT: Mr. Weinberg, do you have any exceptions?

MR. WEINBERG: The defense has no exceptions to the charge, your Honor.

THE COURT: I proceed now to the question of any requests for supplementary instructions.

Do you have any such requests, Mr. Reilly?

MR. REILLY: Yes, your Honor.

Only if stipulated to as unnecessary. The question was raised about the fact that on cross examination, the Government claimed that it was examining Mr. Ebbecke on the Hempstead Bank transactions on the issue of credibility. You gave an instruction to that effect at that time.

Subsequently, it was determined by the Court that positive or extrinsic evidence could be offered on the issue of intent and knowledge.

Does the defendant feel that a charge should be made to cure that earlier instruction?

THE COURT: I would think this would only point something out which would not be helpful, but I will certainly hear from Mr. Weinberg.

MR. WEINBERG: Your Honor, I do not think any further charge is necessary with respect to that.

MR. REILLY: I assumed that would be the answer.

The second thing is my submitting the issue of hearsay testimony, I assume your Honor has made a finding that the preponderance of the non-hearsay evidence is that Mr. Ebbecke was a co-conspirator.

THE COURT: Yes. We have beyond the statements of the co-conspirator, Mr. LeVien, certain documents in the form, for example, of checks which were received in evidence, checks which indicate that the defendant shared in the proceeds which would lead the Court to conclude that the Government did establish by a preponderance of the evidence the existence of a conspiracy which would permit the evidence which might have been considered to have been received subject to the Government's establishing the existence of a conspiracy subject to connection.

I believe the requisite independent proof has been elicted to permit the jury to consider what ordinarily would be hearsay for all purposes.

MR. REILLY: No other requests, your Honor.

THE COURT: Mr. Weinberg, does the defense have any requests for supplementary instructions?

MR. WEINBERG: No, your Honor.

THE COURT: Very well.

I propose, gentlemen, to send the jurors in to begin their deliberations and then we will await an inquiry from them.

I would ask you this:

I did not read the indictment. I would assume the jury will probably send out a note and ask for it.

Do you want me to--and I will do it only on stipulation--do you want me to hand a copy of the indictment to the forelady now or would you prefer to wait for a request from the jury?

MR. WEINBERG: For my part, your Honor, I would prefer to wait for the request.

THE COURT: Very well. I am prepared to do that.

Is there anything further, gentlemen?

MR. REILLY: Nothing, your Honor.

(In open court.)

THE COURT: Miss Kruger, would you swear the marshal, please.

(A marshal was duly sworn.)

THE COURT: Marshal, do you have paper and pencils?

THE MARSHAL: Yes.

THE COURT: Very well.

Ladies and gentlemen, and I speak to Jurors 1 through 12, I place you in charge of the marshal. I instruct you to proceed to your jury room, and once you are gathered around the table, to begin your deliberations.

I will ask the two alternate jurors to remain so I may excuse and thank them.

(At 3:30 p.m., the jury retired to the jury room to deliberate upon a verdict.)

(At 3:45 p.m., a note was received from the jury.)

(In open court, jury absent.)

THE COURT: Gentlemen, I have received a note from the jury which has been marked Court's Exhibit 1 for identification.

"Your Honor, may we have a copy of the indictment."

I propose to have the copy of the indictment which was shown to counsel given to the marshal and sent into the jury.

Is that agreeable to both sides?

MR. REILLY: Yes, your Honor.

MR. WEINBERG: Yes, your Honor.

THE COURT: Very well.

Marshal, would you give the copy of the indictment which Miss Kruger has just given to you to the jury.

Thank you.

I will be readily available and we shall see what we shall see. It will take them a while now because that is four or five pages and by the time they read it, I dare say it will be a few minutes.

All I request is that all concerned remain adjacent to the courtroom. You need not be in there, but just remain adjacent.

(In open court at 4:30 p.m., jury present.)

THE COURT: Ladies and gentlemen, as I indicated previously, I am going to excuse the jury at this time and instruct that you return tomorrow morning at 10:00 a.m. to resume your deliberations.

The following instructions are most important.

Number one. Please, as you leave the box, do not discuss the case, or any part of the case, with anyone, even another of your fellow jurors who you may ride up on the subway with. Please do not discuss the case while you are on your way home, at home or on the telephone or with anyone as you return here tomorrow.

I will no longer tell you to keep an open mind on all facets of the case, because I now tell you to consider all facets of the case so that you can return tomorrow morning to resume your deliberations.

But please do not discuss the case with anyone from this point until you are all reassembled in your jury room tomorrow morning at 10:00 a.m.

The jury is excused. You are directed to return when all of you reassembled in the jury room tomorrow morning at ten o'clock--

JUROR NO. 3: 10:00?

THE COURT: 10:00 a.m.

--you are directed to resume your deliberations.

Good night. Get home safely.

(The jury left the courtroom at 4:40 p.m.)

THE COURT: Is there anything further, gentlemen?

MR. REILLY: Nothing, your Honor.

MR. WEINBERG: Nothing, your Honor.

THE COURT: Very well.

I instruct counsel and Mr. Ebbecke to return tomorrow morning at 10:00 a.m.

I request that you wait just a few moments. I consider that it is doubly important now that none of us should even meet, if possible, by visual sighting, any of the jurors.

I will be available here beginning at 9:30, because I have another matter on tomorrow, and be available as the jury continues their deliberations.

(Adjournment taken to Thrusday, January 27, 1977, at ten o'clock a.m.)

UNITED STATES OF AMERICA

vs. 76 Cr 999 (RJW)

JOHN M. EBBECKE

New York, January 27, 1977,

10:00 a.m.

Trial resumed.

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(The jury is assembled in the jury room to continue to deliberate upon a verdict.)

(At 10:10 a.m., a note was received from the jury.)

THE COURT: The first order of business is to indicate to counsel in the case on trial there is a note which has been marked Court's Exhibit 2 for identification.

The note reads as follows:

"One. Your Honor, the jury would like to have clarified whether we have to find all eight overt acts sustained to find defendant guilty of conspiracy."

I think the answer to that is clear. I charged the jury that they had to find only one of the overt acts in order to sustain a conviction, that is, that one of the overt acts had been committed by anyone.

Then they have a second question:

"We would like to hear Koch's testimony and also LeVien and Ebbeck'e testimony relating to December 4th and 5th conversations."

I am going to take the matter which we have on the calendar for this morning and then we will arrange for the testimony to be prepared for reading.

I would suggest at this point that Miss Kruger advise the marshal to advise the jurors there will be a short wait by them until we bring them into the courtroom in connection with their note.

Is that agreeable to both counsel?

MR. WEINBERG: Yes, your Honor.

MR. REILLY: Yes, your Honor.

THE COURT: Miss Kruger, just advise the marshal, since we had this unrelated matter, the court has received their note. There will be a short wait until we bring them into the courtroom in order to respond.

(Pause.)

THE COURT: Mr. Weinberg, I would propose, with the agreement of counsel, to send in a short note to the jury which I will prepare now and show to you in response to question No. 1.

I think the best way to do it is to work from the portion of the charge and try to adapt language.

In the meantime, our court reporter, with the assistant of counsel, will try to locate the requested testimony.

Is that agreeable, gentlemen?

MR. REILLY: Yes, your Honor.

MR. WEINBERG: It is agreeable with me, your Honor.

(Pause.)

THE COURT: Gentlemen, I propose to send the following note into the jury, if it is agreeable to both counsel.

"January 27, 1977, 10:45 a.m.

"Members of the jury:

"In response to your first question, you need only find that one of the overt acts charged in the indictment was committed by any one of the conspirators in furtherance of the conspiracy.

"Judge Ward."

Is that satisfactory to the Government, Mr. Reilly?

MR. REILLY: Yes, your Honor.

THE COURT: Is that satisfactory to the defendant, Mr. Weinberg?

MR. WEINBERG: Yes, your Honor.

THE COURT: Very well.

Miss Kruger, will you give the note to the marshal and have the marshal indicate to the jurors that they will be brought out shortly to hear the requested testimony.

(Pause.)

THE COURT: What is the problem?

MR. REILLY: Your Honor, the way I read this note is that the jury wants to hear the testimony of Karl Koch, pure and simple, and, secondly, they want to hear **the** testimony of LeVien and Ebbecke only insofar as it relates to the December 4 and 5 conversations.

THE COURT: I read this as a request to hear the testimony of Mr. Koch in toto.

MR. WEINBERG: That is fine.

I understood you.

I would want it all in.

THE COURT: That is the way I understand it. I think that should be read in toto, start to finish.

Then they want to get the complementary testimony of Mr. LeVien and Mr. Ebbecke, the matter you generally focussed on, which were the events of Decmeber 4th and 5th.

MR. WEINBERG: Fine.

THE COURT: Is that agreeable?

MR. WEINBERG: Yes.

MR. REILLY: Yes.

THE COURT: Have you located it?

MR. WEINBERG: We have Mr. LeVien's testimony, we now have Mr. Koch's testimony.

THE COURT: Would you proceed with the court reporter to then locate the final portion, which would be Mr. Ebbecke's testimony relating to December 4 and 5.

(Recess.)

(In open court at 11:10 a.m., jury present.)

THE COURT: Good morning, ladies and gentlemen.

We received your note, which has been marked Court's Exhibit 2 for identification.

The note had two parts to it
and read as follows:

"One. Your Honor, the jury would like to have clarified whether we have to find all eight overt acts sustained to find defendant guilty of conspiracy."

I conferred with counsel and in response to that question I sent you a note.

Your second question, "We would like to hear Koch's testimony and also LeVien and Ebbecke's testimony relative to December 4th and 5th conversation."

It was signed by Miss Queen, your forelady.

We have interpreted your second question to request all of Mr. Koch's testimony, start to finish, and the portions of Mr. LeVien and Mr. Ebbecke's testimony which relate to December 4th and December 5th.

I trust that we have interpreted your note correctly.

In a moment, the court reporter will read the requested testimony, but before doing so, I would inquire of the jury regarding lunch.

The testimony will be read and I give you two choices, since the weather is good:

Either you can be taken out to lunch in a group by the marshal, if that is your preference, or you can order in and lunch will be brought in.

Needless to say, we have to do it one way or the other. If it was a very bad day, I would make my own decision. But the weather is good, although cold.

I would ask the jury, because I just want to make the arrangements for you, by a show of hands to indicate, first, those who would prefer to go out to lunch, the marshal would accompany you, lunch would be, in either instance, paid for by the Government and then you would be returned.

I do not guarantee the food either out or in, but I give you that choice.

So by a show of hands, would you indicate how many of you would prefer to have lunch out together at a restaurant?

I must say I think I saw the last hand up in a moment or so and it would appear that the jury's preference is to go out to lunch.

Marshal, I would suggest that you make arrangements for lunch somewhere in the neighborhood of 12:30 to 12:45 to beat the rush that we have in this neighborhood.

Let me just make one inquiry of our court reporter.

How long do you think the reading will take?

THE REPORTER: Approximately an hour, your Honor.

THE COURT: Ladies and gentlemen, we will now proceed to hear the reading of the requested testimony.

(The testimony of defendant Koch was read to the jury.)

(A portion of the direct examination and cross examination of the witness LeVien was read to the jury.)

(A portion of the direct examination of the witness Ebbecke was read to the jury.)

THE COURT: Ladies and gentlemen, we have completed the reading of the testimony which we believe you wanted.

It is now five minutes of 12:00.

In have, in the time the reading was taking place, spoken with the marshal. He has made reservations for your lunch and you can get to the restaurant between 12:30 and 12:45.

It is my suggestions, since it is now five of 12:00, that you resume your deliberations for a half hour and then, Marshal, I suggest that you proceed with the jury to lunch.

The court and counsel will remain available should you have any other questions and if you can furnish them to us before lunch, they can be answered before lunch and, of course, we are here to do so. If not, we would like to use the opportunity while you are at lunch to prepare whatever is requested.

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Therefore, I will suggest the jury return to the jury room to resume their deliberations. The court and counsel will remain available for one-half hour, and when the jury goes to lunch I will permit counsel to do likewise.

(At 11:55 a.m., the jury returned to the jury room to continue to deliberate upon a verdict.)

(At 2:10 p.m., a note was received from the jury.)

(In open court; jury absent.)

THE COURT: I have received a note from the jury which has been marked Court's Exhibit 3 from the jury:

"Your Honor, the jury has reach a verdict." It is signed "The Forelady."

Miss Kruger, would you ask the marshal to bring the jury in.

(In open court; jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

I have received your note which has been marked Court's Exhibit 3 for identification which indicates that the jury has reached a verdict.

Miss Kruger, would you proceed.

THE CLERK: Members of the jury, would you please answer as your name is called.

(Roll called; all present.)

THE CLERK: Madame Forelady, has the jury agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: What is your verdict as charged in Count 1?

THE FORELADY: Guilty.

THE CLERK: Count 2?

THE FORELADY: Guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded.

You say you find the defendant, John M. Ebbecke, guilty on all counts, 1, 2, 3 and 4, and so say you all.

(A chorus of "Ayes.")

THE COURT: Mr. Weinberg, do you wish to have the jury polled?

MR. WEINBERG: Yes, sir.

THE COURT: Very well.

At this time, ladies and gentlemen, Miss Kruger will ask each of you in turn if the verdict as it has been received, that is, that the defendant is guilty on Counts 1, 2, 3 and 4, is your verdict.

She will proceed from Juror 1, our forelady, through Juror 12 and ask each of you that question.

(Each juror, upon being asked, "Is that your verdict?" answered in the affirmative.)

THE COURT: Ladies and gentlemen, I never tell a jury whether I agree or disagree with the jury's verdict, because, as I said at the outset, and I have said throughout the trial, this is your province, one not to be invaded by or commented upon by the Court.

But I do comment when I note whether or not a jury has been diligent and conscientious in the performance of its duties.

We only assembled on Monday and have only been together for approximately three-and-a-half days, but I had the opportunity in that time to observe you as you listened attentively to the witnesses, as you looked so carefully on those four exhibits which were passed among you, as you listened to the summations and to my charge, and I note from your notes that you went about your job in a methodical and careful manner.

I wish to thank the jury for taking time from their daily lives, from their jobs and from their families to perform this most important duty of citizenship.

I believe that our system of justice functions the best when the citizens of our country participate in that system.

I just want to take this opportunity on behalf of myself and the court in which I serve to thank each and every one of you individually for your jury service.

Miss Kruger will give you your instructions, and I wish you well.

Good luck.

(Jury excused.)

THE COURT: Mr. Weinberg?

MR. WEINBERG: If your Honor please, I will make the usual motions to set the jury verdict aside as being against the weight of the credible evidence.

THE COURT: The court having presided at the trial, having listened to the testimony and examined the exhibits as they were received, believes that the jury's verdict accords with the evidence, that there is sufficient evidence in the record which was presented to the jury for the jury to have reached the verdict which it did, that is, that the defendant is guilty as charged.

Accordingly, the motion is in all respects denied.

I suggest, gentlemen, that a pre-sentence report is appropriate before I set a date for sentencing. I think we might look to the matter of Mr. Ebbecke's status between now and that date, because that will, in part, govern my thinking regarding the date of the sentencing.

Mr. Ebbecke is presently, as I review the records here, on bail of $10,000 personal recognisance bond secured by $1,000.

I note that at the hearing that we had on that subject, the security was to have been psoted by January 7th of this year. I presume that that was done and that the bail as I have indicated it to be is duly posted.

MR. WEINBERG: It was, your Honor.

THE COURT: Is there an application, Mr. Weinberg? Then I will hear from Mr. Reilly.

MR. WEINBERG: Thank you, your Honor.

My application is that the bail of the defendant be continued in its present status until the sentencing date.

THE COURT: Would you tell me a little bit about Mr. Ebbecke's roots?

I recall that he lives on Long Island. Just tell me a bit about his family situation. I know his father has been here throughout the trial. I would also like to know about his home situation, if he is a home owner or whatever.

MR. WEINBERG: He lives in Stony Brook, Long Island, he owns his own home, he lives there with his wife and four children. He is active in the community in that he is a volunteer fireman, he is active in the cub scout pack, he teaches religion at the church. His parents live in Long Island City and he was born in Long Island City and he grew up in Long Island City and he works in Westbury, Long Island. All of his roots and all of his family is here in the metropolitan area.

THE COURT: I would note, also, for the record, that up to this moment Mr. Ebbecke has attended all sessions of the trial, he has been here promptly and he attended at all hearings before the court, save one, where I would excuse his late arrival, he has been present.

I would hear from Mr. Reilly. There is an application pending from Mr. Weinberg to continue bail pending sentencing.

MR. REILLY: The Government does not object to continuing bail under its present conditions.

THE COURT: Very well.

Bail is continued pending sentence.

To restate, the bail is a $10,000 personal recognisance bond secured by $1,000. Bail limits include the States of New York and New Jersey, and that will remain. If there are any further applications regarding bail limits, they should be made in advance of any proposed brief trip which Mr. Ebbecke may feel required to make for business or personal reasons.

I would suggest a sentence approximately five weeks from now. Let me see where that would take us.

I just want to stay within the 45-day period, really.

I would suggest early in March.

I suggest alternatively March 3rd, which is a Thursday, or March 8th, which is a Tuesday. If there would be a preference, I would be willing to set the sentencing down for either date.

Mr. Reilly?

MR. REILLY: The Government has no preference.

MR. WEINBERG: If your Honor please, I have another matter on the 8th. I would prefer the 3rd, if it is convenient to the Court and Mr. Reilly.

THE COURT: Very well.

The matter is set down for sentencing on Thursday, March 3rd, 1977, at 9:30 a.m.

At that time we are scheduled to be sitting in Courtroom 2804.

I suggest that there may be a change in the courtroom schedule. At the moment I do not know. But I suggest that you might, Mr. Weinberg, wish to check with my chambers prior to sentencing.

Mr. Ebbecke, you will be interviewed shortly by the probation department. I suggest you speak in the first instance with Mr. Weinberg regarding the handling of the probation interviews.

When a defendant pleads guilty before me, I tell him to be frank and candid and open. Sometimes a different situation prevails as to how much you wish or your attorney wishes to say after there has been a conviction by a jury, so I suggest you speak with Mr. Weinberg on the subject.

You will be interviewed by the probation department and a report will be prepared and submitted to me prior to the date of sentence.

Mr. Weinberg, it is my practice to permit counsel for defendants to review the pre-sentence report prior to the date of sentence, so I suggest that is another reason why you should communicate with my chambers several days prior to March 3rd and you can come in and review the report. That will give you an opportunity to discuss it with your client and, at the time of sentence, to point out any errors, omissions or present me with any supplementary material which you feel will be beneficial.

In the event you avail yourself of the opportunity to review the pre-sentence report, then the Government may do likewise.

MR. WEINBERG: Thank you.

THE COURT: Bail is continued.

The case is set down for sentencing on Thursday, March 3rd, 1977 at 9:30 a.m. in Courtroom 2804.

Mr. Ebbecke, I must advise you that if you fail or refuse to appear for sentencing on the date, time and place in question, you would subject yourself to additional criminal penalties, which I am sure you neither want nor need

If I doubted that you would be here on the date, time and at the place required, I would not be releasing you on bail pending sentence. I know that you will return as you are required to.

Therefore, so far as I can determine, we have covered the matters which are necessary to be covered today.

If there is anything else, I will hear from Mr. Weinberg or Mr. Reilly.

Mr. Weinberg?

MR. WEINBERG: Nothing further on behalf of the defendant.

THE COURT: Mr. Reilly?

MR. REILLY: Nothing, your Honor.

THE COURT: Very well. Then bail is continued pending sentence. The sentencing has been set and the defendant is directed to appear on the date, time and place set.

The court is adjourned.

(Time noted: 2:30 p.m.)

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-------------------------------------X
UNITED STATES OF AMERICA,

v.

JOHN M. EBBECKE,

Defendant.
-------------------------------------X

No. 76 CR 999

Hon. Robert J. Ward
District Court Judge

Notice is hereby given that JOHN M. EBBECKE, the defendant, appeals to the United States Court of Appeals for the Second Circuit from the judgment entered in this action on March 11, 1977.

Date: March 14, 1977

GERALD D. ZUCKERMAN
Counsel for Appellant
278 Old Country Road
Mineola, New York11501
516/248-4822

TO:

Hon. Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New Yor 10007

Defendant Residence Address Is:
15 Orbit Road
Huntington, New York